



Republic of Serbia
COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND
PERSONAL DATA PROTECTION

REPORT

ON IMPLEMENTATION OF THE LAW ON FREE
ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
AND THE LAW ON PERSONAL DATA PROTECTION
FOR 2017

B e l g r a d e
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1. FOREWORD

This Report is the thirteenth annual report submitted by the Commissioner for Information of Public Importance and Personal Data Protection to the National Assembly of the Republic of Serbia and the ninth such report since the Commissioner's powers have been expanded to include personal data protection.

This Report is also, most probably, the last Report submitted by the current Commissioner for Information of Public Importance and Personal Data Protection.

The last year 2017, as assessed by the Commissioner, has been probably the most difficult one for the work of the institution in the past thirteen years. With maintenance of all existing chronic issues in the last year, the work of the Commissioner was particularly made difficult by the fact that the Commissioner's activities, which were not affirmative for the government bodies, i.e. legal measures undertaken by the Commissioner on that basis, often caused fully unjustified criticism against the Commissioner, underserving for the institution, and obvious lies or, even worse, the competent authorities denied the cooperation with the Commissioner and thus prevented the Commissioner to undertake measures stipulated by the law.

The year ended with the fact which is rather inexplicable. Ministry of Finance prepared, the Government supported and the National Assembly defined the budget in which the amount allocated for the salaries of the employees in the Commissioner's Office was insufficient for the existing number of employees. Bearing in mind the fact that all programme documents of the Government and the National Assembly, and the Action Plan for Chapter 23 proclaim strengthening the staff resources of this institution, it literally looks like a grotesque.

When it comes to the situation in the field of freedom of information and personal data protection, as was the case in the previous eight reports, this Report will confirm large and significant differences in these two areas.

In the area of freedom of information in 2017, the percentage of successful interventions made by the Commissioner was over 93%. Though it can be observed as a relatively high success percentage, it still cannot be a reason for happiness. A particularly worrying situation is related to the formal decisions by which the Commissioner orders the issuance of information. Namely, after the Commissioner requests the first instance authority to make a statement on an appeal, the procedures, in a large number of cases, over 61%, are terminated by suspension, since the body also without the formal decision of the Commissioner, provides the previously denied information. However, in cases when it was necessary to make formal decisions, the percentage of execution of those decisions was around 78%, which is objectively very worrying since it speaks of a fully aware, deliberate ignoring of legal obligations by the government authorities.

The problem of efficiency in protection of the rights of the public has to be explained to a large extent by the lack of support other public authorities were obliged to give to the Commissioner.

Neither the Administrative Inspectorate in the Ministry of Public Administration and Local Self-Government, responsible for the initiation of misdemeanour proceedings against offenders, nor the judicial authorities had an adequate relation to the fact that the law was massively violated. Misdemeanour proceedings have been initiated in the number much smaller than the number of actually committed violations, rarely and selectively, and in most cases terminated by the statute of limitations. It is rather bizarre that in the year in which there were at

least several thousand violations of the law, the Administrative Inspectorate initiated 11 proceedings, and that the citizens, as injured parties, initiated 401 proceedings, demonstrating to be almost 40 times more willing to plead for the implementation of the principles of legality and accountability than the responsible public authorities.

Serbian Government also had an irresponsible attitude towards the legal obligation that in case of need, if the Commissioner could not enforce his decision applying available measures, the Government would ensure the enforcement of the decision by direct enforcement. It is unnecessary to make any further comments on the fact that in 2017 the Commissioner asked the Government do to it 43 times, and the Government never did it.

In 2017, for the third consecutive year, the National Assembly, contrary to the law and its own Rules of Procedure, fails to consider the annual reports of the Commissioner. Moreover, as it was the case last year, the second time in 13 years of existence and operation of the Commissioner's Office, even the "central" Assembly Committee for Culture and Information did not consider the Commissioner's report.

In addition, it is very worrying to maintain the chronic problems related to the exercise of the right of the public to information on the major economic moves made by the government, i.e. public authorities, on the disposal of large financial or material resources. These problems, along with serious violations of the rights of the public, had also other side effects, above all, on the reputation in the anti-corruption context, which was confirmed in 2017 by the chronically poor assessment and position of our country in the Global Corruption Perception Index.

In the area of personal data protection, the situation is still bad and very worrying.

Intensive activity of the Commissioner for the situation in this area is typical. The number of cases in the field of personal data protection last year was 4.607.

Also regarding the effectiveness of the Commissioner's performance, statistics data indicate a relatively high percentage of effectiveness. In cases in which the Commissioner made warnings, the percentage was 90% and in cases of binding decisions, it was around 94%.

Generally, when it comes to personal data protection, our country is still objectively at the very beginning of the process of implementing the European standards in the legal order and real life. It is necessary to make this process must faster and of better quality. Unfortunately, the fact is that this necessity is still insufficiently understood and recognised. The best illustration of that is that in summer 2010, after a long hesitation, at the initiative of the Commissioner for Information of Public Importance and Personal Data Protection, and based on the draft prepared by his associates in cooperation with the EU Commission experts, Serbian Government adopted the Strategy for Personal Data Protection, but is has not adopted the Action Plan for its implementation yet. The three-month deadline for the adoption of the Action Plan expired six and a half years ago, and it has not been adopted yet. It is evident that this is the reason why the Strategy remained only "a dead letter", without any practical effects, and that, having in mind the passage of time, it has become outdated now and that it is necessary to make a new one.

In the absence of a serious Strategy and real commitment to its realisation, public authorities perform inadmissibly little work, more precisely, they do almost nothing about the necessary, further harmonisation of the legal framework, especially the Law on Personal Data Protection, with the European standards, despite the fact we have a big delay in that respect. In mid-2012 the Government formed a Working Group with the task to draft amendments to the Law on Personal Data Protection. However, not even almost five years later there are no effects of the

work of this Working Group. In an effort to assist the Government, i.e. Ministry of Justice, the Commissioner together with his associates and in cooperation with the representatives of the civil sector and the academia, drafted and made available to the Ministry of Justice the appropriate Model of the Law. The Government also had stated in the Action Plan for Chapter 23 that the new law would be enacted by the end of 2015 based on the Model prepared by the Commissioner. However, the law has not been enacted, there has not even been any formal bill, while the “working version” of the Draft presented by the Ministry of Justice has almost nothing in common with the Commissioner’s model, and was of poor quality and contained no solutions to practically any of the important, acute and current issues in practice.

Since it could not endure any serious criticism, that “working version” never appeared again. And the “Working Group” continued its work, still with no results. Since, in the meantime, the adoption of the General EU Regulation on Personal Data Protection¹ has brought extremely significant changes in the global normative context, the Commissioner once again, with the desire to help, prepared a new Law Model and made it available to the Government, i.e. Ministry of Justice.

However, despite the fact that in the Action Plan for Chapter 23 the Government defined that the Commissioner’s Model would be the basis of the new law, it did not happen, and at the end of the year the Ministry of Justice published the Draft Law which in essence represented only the translation of the General Provision on Personal Data Protection without the necessary specific solutions and answers to a number of questions made long time ago. That draft in many aspects, from elementary normative to the functional one is below the acceptable level and is practically inapplicable.

A direct consequence of such inappropriate and irresponsible response to the situation of the normative development of personal data protection is also the fact that there is as yet no law that would regulate numerous, for personal data protection, extremely significant fields, such as video-surveillance and biometrics, which carries many potential and actual risks of violation of the rights of a large number of citizens.

The numerous breaches and violations of the right to personal data protection, some of which are major in scope or significance, make an imperative case for a thorough and fundamental shift in the attitude of the society and the government towards personal data protection and privacy in general. The fact that the volume of the Commissioner’s activities to protect rights has seen a manifold increase provides little comfort; indeed, it is a warning sign. Efforts of all who are in charge are necessary and much better results are needed. This necessity stems both from the reasoning behind the country’s EU integration processes and, even more importantly, from the need to improve the protection of human rights guaranteed by the Constitution of Serbia.

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

2. SITUATION WITH AND OBSTACLES FOR EXERCISE OF THE RIGHT TO FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE AND RIGHT TO PERSONAL DATA PROTECTION

A. Right to Free Access to Information of Public Importance

2.1. Brief State of Affairs regarding the Exercise and Protection of the Right to Free Access to Information

In 2017, the situation of the implementation of the Law on Free Access to Information of Public Importance (hereinafter referred to as: Law on Access to Information) in Serbia, in terms of action and attitude of the government bodies toward the citizen's requests, has not significantly changed, compared to the previous year. However, protection of the right to a free access to information with the Commissioner, and therefore a full exercise of this right in 2017 was burdened with new obstacles, especially starting of the middle of the year.

The right to the free access to information of public importance, according to the increasing number of requests lodged to public authorities² in 2017, was exercised more than last year. At the same time, due to the right violations, in 2017 the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as "the Commissioner") received **by 5.5% more complaints than in 2016, i.e. 3,680 complaints in total**. The number of complaints has not been reduced for several years, and it ranges **between three and four thousand per year**, ten times more compared to the initial year of the implementation of the Law on Access to Information. The largest number of complaints in 2017 was filed against the ministries and other government authorities and organisations in the field of administration (46.73%).

A large number of complaints lodged with the Commissioner is a confirmation of the conclusion that the right to a free access to information of public importance, without lodging complaints and engagement of the Commissioner, is still exercised with difficulties to a large extent, which is, at the same time, a confirmation of the trust of the citizens in the work of this independent state body.

The continual progress in the exercise of the right to the access to information since the adoption of the Law on Access to Information (2004) was marked until 2015, as well as a growth of the efficiency level of measures taken by the Commissioner in terms of the protection of rights, expressed in the number of cases of exercised rights i.e. obtained information compared to the number of justified complaints, and in 2015 it was 95.8%.

That positive trend of the progress in the exercise of the freedom of information was stopped in 2016, and the same applies to 2017, even though in 2017 there were statistically small improvements compared to 2016.

² In 2005, there were around two thousand requests, in 2016 around thirty thousand – data from the reports of 811 bodies (around 28%) submitting the annual report to the Commissioner out of 2.906 bodies in total having the obligation to submit the report, and in 2017 over thirty-one thousand requests (data from the reports of 786 bodies which have submitted the report to the Commissioner, on the date of 1st February 2018).

There is still the worrying phenomenon so-called “administrative silence”, when the government bodies in a large number of cases fully ignore a request by an applicant or provide a negative unelaborated response. The proof for that is the information that out of 3,520 resolved complaints in total in 2017, only 514 complaints (14.6%) were filed against a decision or a conclusion of a public authority, and all other complaints (85.4% or 3,006 complaints) were filed due to the failure of the authorities to act at the request, or due to a negative unelaborated response.³

Complaints of the citizens were largely justified. Out of 3520 resolved complaints with the Commissioner in 2017, **86.4% or 3,041 complaints were justified.** This high percentage of justified complaints by the citizens is the best illustration of the inadequate attitude of public authorities toward human rights.

In 2017, public authorities rejected the requests with reference to secrecy of information or to privacy violation more often than in 2016, even when the required information referred to public procurements, operational costs of authorities, investments, undertaking official actions, property of the officials, etc.

In the second half of 2017, the already present issue of the enforcement of the Commissioner’s decisions had become so complex that such execution became completely non-implementable due to the lack of cooperation between the state bodies, the rejection of jurisdiction, and due to the manner in which they interpret the relevant regulations.

The Commissioner’s inability to enforce the prescribed measures for the enforcement of his decisions, with the absence of the Government’s engagement in ensuring the enforcement, and the absence of the adequate liability for the violation of rights, constitutes the greatest obstacle to exercising the rights, about which more details are provided hereunder.

The number of unenforced decisions (203)⁴ compared to the number of made decisions in 2017 (917) is still inadmissibly high and amounts to 22.14%, which speaks of the complete lack of responsibility of public authorities towards the binding decisions of the Commissioner as a controlling independent body, but also towards the citizens who should have been provided with the information. Most of the unenforced decisions are by the ministries and other state bodies and organisations and state enterprises. Numerous measures taken by the Commissioner in the first half of the year on the submitted proposals of parties for the enforcement, as well as the control of the Administrative Inspectorate, have slightly mitigated this issue and improved the level of execution of the decisions compared to the year 2016.

There is an illustrative information about the same conduct of public authorities in the past years, that after the submission of the complaints and requested statement of the Commissioner, the public authorities acted upon the requests in **61.8% (1,878 cases) compared to the number of justified complaints,** so that the **complaint proceeding was suspended, which confirms the continuation of the irresponsible and irrational attitude**

³ Fully ignoring the requests was recorded in 1,986 resolved cases (56.4%), in 1,020 cases (28.97%) the complaint was filed against a negative response by the authorities and in 514 cases (14.6%) the complaints were filed against the decision or conclusion made the authorities.

⁴ Data on 1st February 2018.

of public authorities towards the citizens in 2017 as well, because the citizens' requests should have and must have been resolved without the complainant addressing the Commissioner.

Bearing in mind the ratio between the number of cases in which the complainants exercised their rights and the number of justified complaints, the conclusion is that, apart from numerous obstacles to the implementation of the Law on Access to Information, there is a high level of efficiency of the Commissioner's work, which is 93.33%.

None of the Commissioner's decisions in 2017 were annulled by Administrative Court⁵, or under legal actions by citizens/information requester or by the Republic Public Prosecutor, and 57 legal actions were lodged against the Commissioner's decisions in 2017, of which 54 were resolved. Four legal actions were filed by the Republic Public Prosecutor's Office, at the initiative of public authorities. In parallel with this, **16 legal actions were filed with the Administrative Court against the six authorities against which complaints cannot be lodged with the Commissioner**, of which 12 against the Government, two against the President of the Republic of Serbia, and one against the National Assembly, and one against the Supreme Court of Cassation. Of these and the complaints filed in the previous period, against the highest authorities, in 2017, the Administrative Court resolved 120 complaints, of which two lodged against the Government were upheld, and the remaining were rejected or denied.

Progress regarding the compliance of the statutory duty of public authorities in terms of the implementation of measures to improve the transparency of their work, as required by the Law on Access to Information, has been slight, mainly in those bodies towards which the Commissioner took some measures, including public prosecutor's offices. Many public authorities which have a statutory duty to publish information booklets about their work, provide staff trainings, maintain data storage media and submit reports on implementation of this Law to the Commissioner have brazenly refused to do so for years without any liability or repercussions, although failure to comply with each of these duties is penalised as an infringement.

Liability for violations of the law in 2017, in a large number of cases is either lacking or is merely symbolic given the number of such violations. Most of the infringement proceedings were instituted pursuant to petitions filed by information requesters as harmed parties and the number of such cases was twice as higher than the number of cases initiated by the Administrative Inspectorate. This absence of liability is a direct consequence of the scope and quality of oversight of implementation of the Law by the Administrative Inspectorate and the divergent practice of magistrates' courts.

2.2. Basic Obstacles to the Exercise of the Right to Access to Information

Exercise of the right to access to information, and the protection of this right by the Commissioner in 2017 was burdened by a larger number of obstacles compared to the previous period. The essence of the obstacle to the exercise of the right to access to

⁵ In the course of writing this report, the Commissioner was provided with two judgements of the Administrative Court which annulled and returned to the re-trial two Commissioner's decisions passed in 2016, judgements 15 Y 7083/16 and Y 7455/16, since 8 December 2017.

information is the absence of the support by the competent authorities, in the following manner:

2.2.1. Non-considering of the Commissioner's Reports and Recommendations

For the past three years the National Assembly has stopped having plenary sessions on considering Commissioner's reports, even though the law obliges it to do it⁶. **From the beginning of his work (2005) the Commissioner has submitted 13 reports to the National Assembly of the Republic of Serbia on the implementation of the laws which are under his competences, 12 regular and one extraordinary report, pursuant to the law.** The National Assembly had plenary sessions for only 3 Commissioner's reports out of 13 submitted reports in total, **for 2010, 2012, and 2013, which means** that in the past three years the Commissioner's reports have not been subject to discussions in the National Assembly. **Six Commissioner's reports were discussed only in the competent or one of the responsible Assembly Boards, and four reports were not discussed at all.**

Reports of independent public authorities protecting human rights, according to the Rules of Procedures of the National Assembly⁷, are first considered by the responsible board and submits the report to the National Assembly, with a proposed conclusion, i.e. recommendations with measures to improve the situation in those fields.

The National Assembly, according to the Rules of Procedures, considers the report of the independent public authority and the report of the responsible board, with the proposed conclusion i.e. recommendation, and after the end of the discussion, a decision is made on the proposed conclusion, i.e. recommendation of measures to improve the situation in those fields, with the majority of votes of MPs in the session in which majority of MPs is present.

The consequence of the failure of the National Assembly to consider ten out of thirteen submitted Commissioner's reports, and thus adopt the proposed conclusions, is the lack of the oversight function of the National Assembly over the Government, i.e. executive power, and missing of the opportunity to have an impact on the elimination of the obstacles to the exercise of rights. In this manner the opportunity is missed also for the MPs to familiarise better, in the process of adopting or amending the laws, with the situation in the field of personal data protection and the inadequate regulation, as well as the field of access to information, and also with the relevant proposals and suggestions given by the Commissioner, which could contribute to a better quality legal regulation and a better protection of human rights.

In 2017, not only was the cooperation or support to the work of the Commissioner missing by the National Assembly, not including the fact that the Commissioner's 2016 Report was considered by the board responsible for human rights; Commissioner was personally exposed to pressure i.e. unjustified comments made by some MPs, including the Speaker of the National Assembly. This is how, for example, the untrue data on the Commissioner's salary were presented in the session of the Assembly, despite the fact that the Commissioner's salary is stipulated by the law, that the decision on the salary is made by the

⁶ Article 58 of the Law on National Assembly ("Official Gazette of RS", no 9/10)

⁷ Article 238 of the Rules of Procedures of the National Assembly of the Republic of Serbia ("Official Gazette of RS", no 20/12)

Assembly itself, i.e. the responsible board, and that the data on the salary are available on the Internet. Such an attitude of the National Assembly has negative effects on the work of the Commissioner as a state body.

2.2.2. Inability of Administrative Enforcement of Commissioner's Decisions

In 2017, the administration, i.e. enforcement of Commissioner's decisions became unenforceable due to the rejection of the jurisdiction and cooperation of other bodies in provision of data necessary for the enforcement of decisions, and due to a different interpretation of relevant norms. Such a situation has been current ever since the very beginning of the implementation of the new Law on General Administrative Procedure stipulating very high fines the Commissioner should order, in the form of penalties in the administrative execution procedure, to the public authorities as executors, in order to force them to execute a decision.

The fines which, in line with the previous Law on General Administrative Procedure, were imposed by the Commissioner in the maximum amount of two hundred thousand dinars per case, and which were largely paid voluntarily by the public authorities, resulted in some effects and increased the level of the execution of Commissioner's decisions, and therefore the access to information as well. However, the fines which were not paid voluntarily, are not collectable anymore, even though it is a public income of the budget of the Republic of Serbia. **In 2017, the percentage of voluntary payment of the fines was significantly reduced compared to the previous year, from 73.5% to only 27.1%, as a consequence of the fact that their collection by coercion is not possible.**

By 2012, the execution of Commissioner's conclusions imposing these fines was performed by local responsible general courts. In 2012, the First Basic Court in Belgrade (with the largest number of executions having in mind the headquarters of the executing authority) declared itself incompetent for the execution, when the executor was the High Court in Belgrade. Since other courts outside this area had a different attitude and accepted the jurisdiction to execute, the Commissioner initiated that the Supreme Court of Cassation should take a position on the matter. The Supreme Court of Cassation took the legal view⁸ that the issue of the execution of Commissioner's conclusions was not in the jurisdiction of the court, that is was regulated in a special manner by the Law on Access to Information, and that the Commissioner's conclusion on the imposed fines was not an enforcement document, and that the Commissioner was the one to execute his conclusion by the seizure of funds from the account of the authority. The practice of the courts was uneven even after the taken legal position.

In addition to the courts, other potentially competent bodies for the execution or for the collection of public revenues, also declared themselves incompetent for the collection of fines imposed by the Commissioner in the procedure of administrative execution of his decisions, as follows: Tax Administration, Ministry of Finance⁹, National Bank of Serbia¹⁰, Misdemeanour Court in Belgrade¹¹ and the Chamber of Public Executors¹².

⁸ Legal position of the HCC no 6/12 since 1 October 2012

⁹ Letter by the Tax Administration to the Ministry of Finance, no 037-00089/2010-08 since 27 January 2011

¹⁰ Letter by the National Bank of Serbia, no IX-1353/17 since 24 August 2017

At the beginning of the implementation of the new Law on General Administrative Procedure (1 June 2017) by which the fines in the administrative enforcement procedure were significantly increased (in the range from a half of monthly income of a legal person to ten per cent of its annual revenues realised in the Republic of Serbia in the previous year), there was a new problem, not only regarding the execution of Commissioner's penalty decision, but regarding the definition of the fine itself, i.e. collection of the data on the basis for the definition of the fine i.e. data on the annual revenues of bodies for the previous year, necessary for the definition of the fine in line with the law, the data which the Ministry of Finances refuses to submit to the Commissioner.

At the Commissioner's request for the data on realised revenues in 2016 for the public authorities against which the administrative execution procedure was initiated, and to which a fine should be imposed, the Treasury of the Ministry of Finance did not submit the requested data. In October 2017¹³, the Treasury informed the Commissioner that it was undisputed that the funds for the work of those bodies, i.e. ministries, were allocated in the budget, and also commented on the application of the regulations for which that body is not responsible (Law on Public Administration). Compared to the requested data on the indirect budget beneficiaries (e.g. City Administration of the City of Belgrade and Belgrade Philharmonic Orchestra), it stated that those bodies were not obliged to provide the data on their revenues to the Treasury.

After receiving the reply, the Commissioner again requested from the Ministry of Finance and the Treasury to provide the requested data, making reference to the relevant law provisions stating that the Treasury must have the required data¹⁴. The Commissioner then sent an urgency note and the request for provision of additional data for several other bodies for which, in the meanwhile, the execution procedure was initiated.¹⁵ This time, the Treasury informed the Commissioner that the requested data were not within the jurisdiction of the Treasury, and that the Commissioner should address the Ministry of Finance for the provision of those data, i.e. to the competent directorates and sectors of that ministry which, as stated, had the accurate and comprehensive data and information requested by the Commissioner.¹⁶

Even though he addressed the Ministry of Finance, to the Minister himself, the Commissioner addressed that Ministry once again¹⁷ in early January 2018, requesting the necessary data for the execution of his own authorities. This time, the Ministry refused to submit the data¹⁸ explaining that the law did not define the term of total revenues of the budget beneficiaries, that public revenues and income are general revenues of the Republic of Serbia, and not the revenues of the bodies, pointing out the need of obtaining the opinion from the Ministry of Public Administration and Local Self-Government on the application of provisions of Article 198 of the Law on General Administrative Procedure, regulating the enforcement.

¹¹ Letter by the Misdemeanour Court in Belgrade VIII Su. No 1/2017-1568 since 26 September 2017

¹² Note no 07-00-1/2017-04/71 since 18 September 2017

¹³ Letter by Ministry of Finance – Treasury no 401-00-788-2/2017-001-007 since 31 October 2017

¹⁴ Letter by Commissioner no 071-04-2783-2/2017-03 since 14 November 2017

¹⁵ Letter by Commissioner no 071-04-2783-3 /2017-03 since 27 December 2017

¹⁶ Letter by Ministry of Finance – Treasury, no 401-00-788-11/2017-001-007 since 8 January 2018

¹⁷ Letter by Commissioner no 071-04-2783-4 /2017-03 since 10 January 2018

¹⁸ Letter 08 no 401-00-233/2018 since 23 February 2018

Other mechanism which is to bring to the execution of Commissioner's decisions, by which the public authorities are obliged to provide the requested information to the complainant, which are in the jurisdiction of Serbian Government, also does not work. It is a legal obligation of the Government to ensure, at the request of the Commissioner, by direct coercion, the execution of his decisions¹⁹. Out of 137 requests in total²⁰ for ensuring the execution, the Commissioner has submitted to the Government since 2010, it has never done it not in a single case. Only in 2017, the Commissioner requested ensuring the execution in 43 cases.

For example, in 2017, the Government refused to ensure the execution of decisions that the information requesters should be allowed the access to information i.e. contracts the PE "Serbian Railways" had concluded in the period 2011-2013, in connection with marketing advertising and public relations services, sponsorship/donations, et cetera; then the information from the contract and annexes to the contract on procuring raw material which "Železara Smederevo" Ltd. had concluded with company Bremer International Limited, in 2013 and 2015, and the information on performed payments; certain information of the Anti-Corruption Agency regarding the control of property and revenues of the Mayor of Belgrade in 2016; information from the contract on public procurements of PE "Srbijagas" concluded with the company "Energotehnika – Južna Bačka" Ltd Novi Sad, in the period from 2010 until 9th February 2015, and others.

2.2.3. Difficult Enforcement of Commissioner's Authorities

In 2017, in the procedure for resolving complaints on the violation of the right to access to information in 14 cases, the Commissioner applied the authorisation referred to in Article 26 of the Law on Access to Information, giving him the authority to request from the public authorities, for inspection, the documents containing the information which is the subject of the complainants requests, in order to identify if the information contained in the document can be made available at the request of the complainant or not. In the past years, the Commissioner used this authorisation with no major issues in the manner that the public authorities, at his request submitted, for inspection, the required documents for the purpose of identification of the factual state necessary for making a decision on the complaint, except from one case. That case referred to the case of "Železara Smederevo"²¹ in which the Ministry of Economy, apart from denying the access to the information contained in the required contracts, refused to provide the required documents for inspection.

In 2017, of fourteen requests made by the Commissioner to be provided with the information in the integral text, for inspection, in 8 cases the public authorities provided the Commissioner with the requested documents, which the Commissioner, after the inspection, duly returned applying the stipulated safety measures if the documents were classified.

Six public authorities refused to provide the Commissioner with the requested documents. One of the listed cases referred to the *Faculty of Law in Novi Sad* which informed the Commissioner that it did not have the documentation, which according to the circumstances of the case, was impossible, since the documents referred to the official communication regarding PhD title acquired at this faculty. The information refers to the

¹⁹ Article 28 paragraph 4 of the Law on Free Access to Information of Public Importance

²⁰ Information refers to the situation on 1 February 2018

²¹ The case is described in the 2016 Report of the Commissioner, available at <http://www.poverenik.rs>

doctoral thesis of one holder of a public and political function, professor at a university and a Member of Parliament and a head of the leading parliamentary group in the National Assembly.

The other case referred to the procedure on the complaint filed by a journalist against the **Anti-Corruption Agency** in connection with the information on control of property and income of the Mayor of Belgrade and the enforcement of the decision made on the complaint. In that procedure, the Agency failed to provide the requested documents, for inspection, to the Commissioner even after three repeated requests. The Agency first demanded that the Commissioner should inspect the documents in person, on the premises of the Agency,²² in relation to which the Commissioner indicated to the Agency²³ that it was not in line with the law, that such an act of the Agency represented a precedent in the Commissioner's years of work; that the Commissioner had a large number of employees holding the relevant certificate for the access to classified documents, at the same time expressing a doubt in the existence of the conditions to classify the required information as classified. He invited the Agency to cooperate and submit the requested documents in the integral text, in the manner stipulated by the Data Secrecy Law and the regulation on handling classified documents. The Agency again refused to submit the requested documents to the Commissioner, making a condition that it could be possible only on the premises of the Agency.²⁴ Then, the Commissioner, for the third time, invited the Agency²⁵ once again to act in line with his request so that the facts of importance for conducting the decision enforcement procedure could be identified, which Agency failed to do.

The above described manner in which the Agency acted was even more problematic, since none of the employees in the Agency, at that time, held the certificate for the access to classified documents²⁶.

Ministry of Foreign Affairs refused to provide the Commissioner with the documents, i.e. report of the Ministry working group investigating the circumstances of death of the officer of Serbian Embassy in Libya. In that respect, the Ministry required from the Commissioner to obtain the expert opinion from the Office of the National Security Council and the opinion of the Ministry responsible for justice, responsible for the surveillance over the implementation of the Data Secrecy Law, since those were "classified" documents²⁷. This reply was received in spite of the fact that the Commissioner had previously informed the Ministry²⁸ that in the Commissioner's Office all defined requirements had been met in connection with handling of secret data, and that the access to the secret data was allowed only to persons holding the relevant certificates.

Ministry of Mining and Energy has justified its failure to provide the documents which refer to the business relationship with the company that, according to the decision of the Arbitration Court in Geneva, has claims towards the Republic of Serbia, based on the debts of RTB Bor, by asking the opinion of the State Attorney's Office on whether it could act

²² Letter of the Anti-Corruption Agency no 014-037-00-0503/16-05-02 since 27 March 2017

²³ Letter of Commissioner no 071-04-881/1/2017-03 since 4 April 2017

²⁴ Letter of the Anti-Corruption Agency no 014-037-00-0503/16-05/3 since 7 April 2017

²⁵ Letter of Commissioner no 071-04-881/2/2017-03 since 11 April 2017

²⁶ Letter of the Office of National Security Council and Protection of Secret Data no 07-00-00005/2/2017-01 since 19 April 2017

²⁷ Letter of the Ministry of Foreign Affairs II no 44-3/2017 since 11 December 2017

²⁸ Letter of Commissioner no 071-01-2148/2017-03 since 22 November 2017

in line with the Commissioner's request, and since then it has been more than two months and there have been no actions on that matter.²⁹

Other cases refer to *PE "Jugoimport SDP"* and the documents-contracts on donations in which case the PE did not reply to the Commissioner's requests at all, and to the *Ministry of Defence-Military Security Agency* and the documents about the incident during the 2014 Pride. The Ministry-MSA asked the Commissioner to have the inspection of the documents on the premises of the MSA, to which the Commissioner replied and repeated his request, but the Ministry-MSA failed to provide the requested documentation after that, and again asked the Commissioner to have the inspection of the documents on the premises of the MSA.

The possibility for the Commissioner to exercise his authority of inspecting the source document containing the information which is the subject of the request on the premises of the public authority is unacceptable due to several reasons. Primarily, it is not feasible, having in mind that several thousand state authorities in Serbia³⁰ are subject to the implementation of the Law on Access to Information, and that the Commissioner's capacities are disproportionate to that number, and the exercise of this authority on the territory of Serbia, even if it is objectively feasible, would be completely irrational. And most importantly, it is almost impossible to prepare a decision on a complaint without simultaneously considering the content of the documents and determining whether and what information or parts of the documents should be excluded from access, when it comes to a confidential document.

2.2.4. Improper Liability

Violation of the right to free access to information, including the most drastic forms of total ignoring of citizens' requests and failure to comply with the executive and binding decisions of the Commissioner to the lack of fulfilment of other legal obligations of the public authorities, in 2017 also remained unpunished to a large extent, compared to the degree of non-compliance with the Law on Access to Information.

The situation regarding the liability for the violation of the right to access to information is best illustrated by the data that there were only 11 requests for the initiation of a misdemeanour procedure, as much as the Administrative Inspectorate filed with the misdemeanour courts in 2017³¹, compared to about three thousand justified complaints resolved by the Commissioner in the same year. Also, the degree of implementation of other legal obligations in connection with the publication of the information booklets about their work, submission of the report to the Commissioner, implementation of training, is less than 30%, and these obligations apply to almost three thousand public authorities, which means that a vast majority of authorities ignore this obligation, without being punished.

The absence of liability for the violation of this right, and not only the misconduct liability, undoubtedly encourages those responsible persons in the public authorities to continue with it, convinced that they will not bear any consequences. In addition, the long-term absence of full liability for the violation of rights is the main cause of a very

²⁹ Letter of the Ministry of Mining and Energy no 011-00-128/2017-02 since 24 November 2017

³⁰ About eleven thousand public authorities, according to the situation from the Catalogue of Public Authorities www.poverenik.rs

³¹ Letter of the Administrative Inspectorate number 011-00-00031/2017-06 since 18 January 2018

large number of complaints with the Commissioner. The Commissioner's objective inability to resolve all the complaints within the deadline defined by the law is often the reason for making charges and causing costs and unnecessary budget expenditures. This justifies the dissatisfaction of citizens and additionally burdens the operations of the Commissioner's Office.

With such a state of affairs, in 2017, the citizens whose right was violated, filed 401 request for the initiation of misdemeanour proceedings,³² themselves as injured parties, which is several times more than the 11 requests submitted by the Administrative Inspectorate, which will be more discussed in this report hereunder.

Apart from the lack of liability, there is also a problem of the unequal practices of some misdemeanour courts and different punitive policies. As for the legitimacy of the injured parties to file a request for the initiation of a misdemeanour procedure, and especially when they did not previously, in the administrative procedure, use the institute of complaint with the Commissioner, certain misdemeanour courts still do not abide by the position taken by the Supreme Court of Cassation on 6th December 2016, at the initiative of the Commissioner, II Su - 17157-16, according to which the denial of an adequate response to the information requester constitutes a violation of personal right, so that the information requester as an injured party is always authorised to file himself a motion for initiation of a misdemeanour procedure. This position was also represented by the Commissioner even before the Court took this position.

It is particularly worrying that even the Misdemeanour Court of Appeal does not have a single position rearing the issue of an active legitimacy to initiate a misdemeanour procedure when information requesters are legal persons. Thus, in two cases this Court in Belgrade took the position that citizen association did not have the status of the injured party, i.e. it failed to prove³³, and the Department of the same court in Novi Sad, in three decisions, confirmed the position that the status of the injured legal person arises from the very Law on Access to Information³⁴.

Despite the taken position by the Supreme Court of Cassation and the Commissioner's letter to the Misdemeanour Court of Appeal on that³⁵, the Commissioner is still addressed by the misdemeanour courts seeking the information on the complaints lodged in specific cases, on the occasion of conducting the misdemeanour proceedings, which is irrelevant when it comes to the right of the information requester to file a request to initiate a misdemeanour procedure. In addition, it is also an unnecessary administration which prolongs the misdemeanour proceedings at the detriment of the injured party.

In cases where sentences were imposed, they are on average closer to the legal minimum, and very often, in the appeal proceedings, there was a suspension of proceedings because the statute of limitations expired.³⁶ In this respect, it is important to mention that in the process of amending the Law on Misdemeanours, the Ministry of Justice did not accept the Commissioner's initiative to increase the limitation period for the offenses defined by the Law on Access to Information, bearing in mind its anti-corruption potential.

³² Data of the misdemeanour courts in Serbia provided at the request of the Commissioner

³³ Judgement 20-Прж. no 5321/17 и 7-Прж. no 10956/17

³⁴ Judgements III-305 Прж. no 1824/17, III-308 Прж. no 17028/17 III-308 Прж. no 14033/17

³⁵ Letter of the Commissioner no 071-02-1267/2017-03 since 12 April 2017

³⁶ Data of the misdemeanour courts provided at the request of the Commissioner, illustrated in the report hereunder

2.2.5. Multiannual Delays of Amendments to the Law on Access to Information

The very necessary amendment to the Law on Access to Information, which would eliminate the biggest obstacles in its implementation and the exercise of citizens' rights, the executive power, i.e. the Government of the Republic of Serbia, has been postponing for six years, i.e. since 2012, when the Bill on Amendments to the Law on Free Access to Information of Public Importance was withdrawn from the parliamentary procedure. Since then, the needs for the amendment to the Law have been much more pronounced, including the full regulation of the issue of the execution of the Commissioner's decisions, in order to eliminate the possibility of different interpretations of the norms and the rejection of liabilities by some public authorities, as discussed above. Furthermore, the permanent postponement of amending this law has a negative impact on the exercise of the right itself, and at the same time puts the unnecessary burden on the work of the Commissioner.³⁷

The competent authorities have committed themselves to the adoption of the amendments to the Law on Access to Information in almost all of their strategic documents (on anti-corruption, on public administration reform, on accession to the European Union, on integrations – Chapter 23, on the implementation of the internationally accepted idea of Open Government Partnership, etc.), underlining the need for greater transparency of all processes of the public authorities, expending the powers and resources available to the Commissioner, the obligation to respect the decisions and instructions of the Commissioner. The last defined deadline for the adoption of the amendments to the Law on Access to Information is the last quarter of 2017.³⁸

Adoption of the amendments to the Law on Access to Information is necessary in order to eliminate evident obstacles in the exercise of rights, primarily those which refer to the execution of the Commissioner's decisions, but also in order to improve the proactive publication of information, greater transparency and liability of public authorities and the empowerment of anticorruption potentials of this law.

2.3. Typical Cases of Thwarting the Right to Free Access to Information in 2017

2.3.1. Declaring the Information on Officials (property, income, titles, etc.) Secret

An illustrative example of a violation of the right to free access to information of public importance by the misuse of the Data Secrecy Law by the public authorities are the cases which refer to the information on property and income of the officials.

According to the Data Secrecy Law, a secret data may be the data of interest for the Republic of Serbia which disclosure to unauthorised persons could cause harm, in particular the data which refer to the national security and public safety, defence, foreign, security and

³⁷ At the completion of this report, the Ministry of Public Administration and Local Self-Government initiated the procedure of amending the Law on Access to Information

³⁸ Report no 3/2017 on the implementation of the Action Plan for Chapter 23, November 2017 <https://www.mpravde.gov.rs/tekst/17033/izvestaj-br-32017-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php>
In the course of writing this report the Ministry of Public Administration and Local Self-Government published the starting basis for the amendments to the Law on Access to Information: <https://www.mpravde.gov.rs/tekst/17033/izvestaj-br-32017-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php>

information affairs of public authorities, the relations of the government with other governments and international organisations.

The “Siniša Mali” Case

In the case of Siniša Mali, the Mayor of the City of Belgrade, in 2017, the Commissioner had 14 cases regarding the journalists’ complaints about the denial of access to information or about the proposals for execution of the decisions made on the complaints, and they refer to the following:

Higher Public Prosecutor’s Office rejected the requests of several journalists to submit the information in connection with the criminal proceeding against this official, about the actions and measures taken regarding the Report submitted to the public prosecutor’s office by the Anti-Corruption Agency in August 2016, and the Report of the Administration for the Prevention of Money Laundering about the control of financial activities of this official, which was performed based on the report of the bank from 2009, on the suspicious cash transaction to the account of the of the mentioned official in the amount of more than half a million of euros. The Public Prosecutor’s Office refused to disclose this information with the reference to data secrecy, claiming that it is the “classified” information, so the information was not provided even at the order from the decisions made by the Commissioner based on the complaints of the journalists. The response of the Public Prosecutor’s Office sent to the journalist states that “based on the collected data, and the analysis of those data, the Higher Public Prosecutor’s Office in Belgrade found that there are no evidence which might suggest that the actions taken by the Mayor Siniša Mali could have elements of any criminal offense from the jurisdiction of the higher prosecutor’s office.” Higher Prosecutor’s Offices are responsible for the criminal offense of money laundering.

The Anti-Corruption Agency initially denied the Report on the Extraordinary Control of Property and Income of the mentioned official, with the reference to the fact that the submission of such a report would jeopardise his privacy, and the conduct of the proceeding. Based on the Commissioner’s order, the Agency provided the requester with the Report, but it protected more data than ordered by the Commissioner’s decision. The Agency also refused to provide the journalist with the letters of the Administration for the Prevention of Money Laundering and the Higher Public Prosecutor’s Office on this case, with the explanation that these were “classified” documents. In this case, the Agency refused to ensure the Commissioner with the insight in the mentioned documents, which has already been mentioned in this report.

Regarding the same case, the Administration for the Prevention of Money Laundering within the Ministry of Finance, made reference to the data secrecy when it refused the request of the journalist to provide the letter of the Higher Public Prosecutor’s Office which was sent to it, and the response to the letter with the accompanying documentation. The Report of this administration on the controversial cash transactions has not been made public yet.

The Tax Administration of the Ministry of Finance also with the reference to the confidentiality of data, refused to provide the information about what it did regarding the

report submitted to it by the Anti-Corruption Agency in the case of determining the property and income of Mr Siniša Mali.

Belgrade University, on the basis of Commissioner's decision made on the complaint filed by the journalist, made available the information on the activities undertaken in connection with reporting the plagiarism of doctoral dissertation of Mr Siniša Mali from 2014, after which it had initially refused to provide the information with the reference to possible jeopardising of the proceeding.

The "Aleksandar Vulin" Case

In the case of Mr Aleksandar Vulin, Minister of Defence, in 2017, the Commissioner had 9 cases regarding the journalists' complaints about the denial of access to information or about the proposals for execution of the decisions made on the complaints, and they refer to the registration of property and definition of the origin of money of around two hundred thousand euros for the purchased apartment, i.e. the actions taken by the responsible authorities in connection with this.

Administration for the Prevention of Money Laundering in the Ministry of Finance refused to provide the information, from its replies to the Anti-Corruption Agency on the submitted report on the property of Mr Aleksandar Vulin, and the suspicion of committed criminal offence of money laundering, to the journalist with the explanation that those documents were "classified". The same was done by the Anti-Corruption Agency, with the explanation that it was a document marked as "classified" by the Administration. The Administration acted upon the order from the decision made by the Commissioner on the complaint, and after that, after the removal of the classification marking by the Administration, the same was done by the Agency, acting in line with the Commissioner's decision.

The Prosecutor's Office for Organised Crime provided the information requester with the information from the official note that preceded the decision of the Prosecutor's Office on declaring itself non-authorised to act upon the criminal charges against MR Aleksandar Vulin, regarding the investigation of the money origin for the purchase of the apartment.

The First Public Prosecutor's Office initially justified the refusal of submission of the information to the journalist on the actions in case of Mr Aleksandar Vulin, by stating that the submission of the information on the dismissal of the criminal charges and the official note on that could jeopardise or aggravate some future court proceedings, if any new evidence appeared. Upon the Commissioner's complaint, the same prosecutor's office replied that in this specific case there were no grounds to initiate a proceeding for the criminal offense of non-reporting of property, and that the prosecutor's office, within its jurisdiction, carried out an inspection only when it comes to that act, and that the inspection of allegations of the money origin fell under the jurisdiction of the Higher Public Prosecutor's Office in Belgrade.

In addition to the above mentioned information on the actions of public authorities in connection with the property of Mr Aleksandar Vulin, the public interest was related to the information on the military service and the exemption from it, based on public statements given by Minister Vulin on that. The Ministry of Defence failed to act upon the request of the information requester with the explanation that it would violate the privacy of the Minister.

The Ministry of Defence acted in line with the Commissioner's decision made on the complaint.

2.3.2. Denial of Access because of Hypothetical Threat to Other Interest or Ignoring the Request for Information

The "Savamala" Case

The information on the event of demolishing buildings in Hercegovačka street in Belgrade which was performed under unusual circumstances in the night of 25 April 2016, the so-called "Savamala" case, and the information on the measures taken by the responsible public authorities or not taken, and other circumstances in connection with that even remained a topic of public interest in 2017. Unfortunately, despite all the measures and formal decisions taken by the Commissioner regarding the citizens' address and complaints, many data have been publically unavailable.³⁹

The First Basic Prosecutor's Office in Belgrade which conducts the proceeding in connection with this case which was handed over to it by the Higher Public Prosecutor's Office in Belgrade and Ministry of Interior, refuse to act upon the Commissioner's decision and provide the information which relates to all the reports of the Ministry submitted at the request of the prosecutor's office in connection with this event. The Ministry also refused to provide the report on the internal control in connection to this event.

As the Ministry ignored the requests of the requesters and did not make statements on the allegations from the complaint submitted by the Commissioner, the Prosecutor's Office rejected the requests made by journalists stating that it would jeopardise the investigation procedure, without the explanation how, after almost two-year period, the investigation procedure could be jeopardised by the publication of the requested information. The Prosecutor's Office also denied the access to other information from the investigation, including the replies of public enterprises "Parking servis" and "EPS Elektrodistribucija" from Belgrade in connection with this event.

PUC "City Sanitation" Belgrade also refused to respond to the request of the information requester, and to make a statement on the complaint and act upon the Commissioner's decision to provide the information to the complainant in connection with cleaning Hercegovačka street on 24/25 April 2016.

Denial of access to the information about this event, and the Commissioner's decisions on complaints that the information must be made available, should be considered in the context of the circumstances that they refer to the event in relation to which the Ombudsman⁴⁰ identified the violation of human rights and serious omissions in the conduct or failure to act by responsible authorities, that it has been almost two years since the event took place, and that the investigation procedure is being conducted for an undue length of time, which additionally enhances the public interest to know the truth about it. Also, on 14 June 2017, the European Parliament adopted the Resolution of the 2016 Commission Progress Report on

³⁹ In the [Commissioner's 2016 Report](#) there are activities taken that year

⁴⁰ Findings and recommendations of the Ombudsman, no 13-32-2147/2016 since 9 May 2016 and no 13-37-2526/2016 since 10 June 2016 <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33?limit=50&start=50>

Serbia, in which point 14 states that is “has taken note, with concern, of the controversial events in Belgrade’s Savamala district, with regard in particular to the demolition of private property; expresses concern that one full year has passed without any advances in the investigation, and calls for its swift resolution and for full cooperation with the judicial authorities in the investigations to bring perpetrators to justice“. It can be concluded from the aforementioned that the requested information is of importance for the insight into the work of prosecutor’s office and other competent authorities about the mentioned case and the rule of law, both by the domestic public, and by the EU bodies, in relation to the negotiation of Serbian membership in the EU.

The “Nikola Tesla Airport” Case

Commission for Public-Private Partnership in Belgrade failed to act upon the request of the organisation “Transparency Serbia” from Belgrade, asking for the intimation i.e. copies of the documents containing the opinion on the proposal of the project for the public-private partnership for “Nikola Tesla” Airport. At the Commissioner’s request to make a statement about the complaint subject, the Commission failed to respond or act upon the Commissioner’s decision made on the complaint to provide the information to the requester.

The Ministry of Finance, from which the same organisation required the information contained in the Concession Act and the Feasibility Study of the Concession “Nikola Tesla” Airport, informed the requester and the Commissioner that it did not have the requested information. Transparency – Serbia requested this information also from the line Ministry of Transport, and from Serbian Government. At first, the Ministry of Transport refused to provide the information, with the explanation that it would jeopardize the interest of the government, and that, after the intervention of the Commissioner, it claimed that it did not have those documents.

The Government did not respond to the request of the information requester, and the Administrative Court, upon the appeal filed by Transparency, made an order to the Government to respond to the request, which Government did not do.

The mentioned acts, according to the Law on Public Private Partnership and Concessions, should give the response to the public about the question why this concession is better than other possible solutions to develop investment of own funds or sale.

The “Depo Retail Complex” Case

Journalists required from the “GSP Belgrade” the information in connection with the damage occurred due to the fire in August 2014, in which the retail complex “Depo” burned down in Belgrade, Bulevar kralja Aleksandra 142, owned by that enterprise, and the information regarding the reporting of the damage, the insurance of the property, and the amount of collected damages, i.e. liquidated damages. GSP ignored the requests of the journalists, made no statements on the complaints sent to it by the Commissioner for a statement. PUC GSP “Belgrade” acted upon the Commissioner’s decision on the complaint.

In connection with this event, the First Basic Public Prosecutor’s Office in Belgrade, which was requested to provide a copy of the Prosecutor’s official note that there were no prospects of initiating criminal proceedings, refused to submitted request with the explanation

that it might jeopardise a new criminal proceeding, even though it had identified that there were no prospects of initiating criminal proceedings *ex officio*. The Prosecutor's Office acted upon the Commissioner's decision made on the complaint.

Information related to the insurance, reporting and collection of damages in connection with this event remained unknown to the public and is a source of suspicion because of the further use of the mentioned land complex in an attractive location by the City of Belgrade, i.e. the sale to the company which, according to the publicly available information from the register, was registered right before the purchase.

B. Right to Personal Data Protection

2.1. Legal Framework – Main Issues in Personal Data Protection

The legal framework in the field of personal data protection has not been fully, not even sufficiently regulated, while some laws defining the full processing of personal data in certain situations are in mutual collision. As a consequence of such a situation, there are violations of the right to personal data protection and the violation of privacy. With a continuous postponement of the adoption of the new law on personal data protection, the cases of violation can be categorised as usual.

In addition to the legal framework which still represents the main obstacle to ensuring the personal data protection in Serbia, since this field is intertwined with all the aspects of the society and individuals in that society, the access to the personal data protection should be systematic. As such, it means that Serbia as a society should commit itself to the protection of privacy and the values which that right, including personal dignity, have for the society. A systematic approach would mean a formulation of a strategy, as an official document, and in that respect, the action plan as well.

It is important to underline that the right to privacy and personal data protection cannot be fall under the jurisdiction one body or only some bodies. At the same time, personal data represent a value for all companies which make profit from data processing, so it is necessary that all companies have a responsible treatment of personal data. However, inadequate legal framework cannot be suitable for companies, since such regulation causes legal insecurity.

Having in mind the lacks of the legal system of personal data protection in Serbia, on one hand, and the significance of the new European legal framework for data protection for the entire world, on the other hand, it appears that Serbian economy will face a huge loss. The loss will also be faced by Serbian citizens to whom the government fails to ensure the level of protection which, starting of May 2018, will be ensured for all EU citizens. In the end, the loss will be faced by Serbian state which missed the deadlines set by the Government, defined by the Action Plan for Chapter 23 "Judiciary and Fundamental Rights", risking to get unfavourable assessment by the European Commission.

2.1.1. International Legal Framework

From the aspect of international law and international relations, harmonisation of the national legislation with *acquis communautaire* is the international law commitment of the Republic of Serbia assumed under the Stabilisation and Association Agreement (Article 81)⁴¹. Moreover, the country's EU candidate status implies the external and internal political policy in line with the policy of the European Union and the *acquis communautaire* of this subnational organisations.

As a member of the Council of Europe, the Republic of Serbia participates in the creation of the European Law on Human Rights, and the standards of human rights expressed, inter alia, in the judgements of the European Court of Human Rights are an integral part of the internal law as a generally accepted rules of the international law.

For several years so far, the activities of both the European Union and the Council of Europe have been significantly intensified in the field of the right to personal data protection.

In the field of personal data protection, there have been some significant changes in the European Union and this field is a rare one within the competences of the European Union, especially of human rights, which is regulated in a single manner with the possibility of minor deviations. The Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, was passed. The Regulation not only repeals the Directive 95/46/EC, but it significantly differently, more fully and more precisely regulates personal data protection, not only in the European Union, but almost globally. Due to the reason of complexity and comprehensiveness of the document, the countries are left the two-year time period to harmonise their own regulations.

The first Member State to do so was Germany and it is also an example of the fact that the harmonisation with the Regulation does not mean to copy-paste it, since the Regulation does not regulate, for example, the process issues, nor all special forms of data processing such as video-surveillance. Some provisions refer to national laws as the final choice among the offered alternatives, or specificities of the national legal systems.

In addition to the above Regulation, Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, detection, investigation, or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977. This Directive entered into force on 5 May 2016, while EU Member States must transpose arrangements of the Directive in their national legislations until 6 May 2018.

As for the Council of Europe activities, it is important to underline the work on the modernisation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the first binding international document in the field of data protection, adopted in 1981. The Objective of the new document, which form as a new conventions or an additional protocol of the existing one has not been decided, is to improve

⁴¹ Law on Confirming the Stabilisation and Association Agreement between the European Community and its Member States, on the one hand, and the Republic of Serbia on the other hand ("Official Gazette of RS – International Agreements", no 83/2008).

the data protection and align the legal systems of the wide variety of countries, since it is open for the access to non-members of the Council of Europe.

Several important judgements of the European Court of Human Rights with regard to Article 8 of the European Convention on Human Rights which guarantees the right to privacy were passed in 2017, which effect is of importance for the national legal frameworks. For the need of the report, it is necessary to single out two judgement – the first one refers to the obligations of the employer when establishing the allowed monitoring over the employee,⁴² and the second one refers to the DNA processing as biometric and genetic data and creation of the database for the needs of bodies of interior.⁴³ The first judgement points out the possibility of monitoring the employees as an exception and contains a detailed list of obligations of the employer in case of intention of such intrusion into the privacy of employees. The second judgement points out the obligation of minimisation of data in case of forming a DNA registry in terms of gravity of the offenses or duration. This judgement is of particular significance when considering the danger imposed on the privacy and other human rights in case of non-critical adoption of the Law on DNA Registry, which is further discussed in the part of the report on selected working versions of the law for which the Commissioner gave opinion.

It should also be noted that the Commissioner, in line with his powers and status of an independent state body, has used every opportunity to reiterate his unconditional commitment and offer assistance and support to the competent bodies and authorities in Serbia's EU stabilisation and association process. In this context, in 2017 the Commissioner submitted multiple contributions to the Serbian Government, the Ministry of Justice, the Ministry of Public Administration and Local Self-Government, the Serbian European Integration Office and the Council on Implementation of the Action Plan for Chapter 23.

2.1.2. Internal Legal Framework

Having in mind the fact that in 2017, there were no amendments to the Law on Personal Data Protection, this part (2.1.2.) of the report contains the repeated information from previous reports.

As for the existing Law on Personal Data Protection and the assessment of its non-compliance with certain general principles, institutes and practice of data protection, primarily on the territory of Europe, several fields could be underlined. Namely, numerous provision of the Law on Personal Data Protection are inappropriate, some are incomplete, while some are missing from the LPDP, while not regulated by other special laws.

As an example of provisions which are inappropriate, there is a form of acceptance of a person to personal data processing, which ignores not only the development of technology, but also the usual interpersonal relations. Therefore, for example, the LPDP does not recognise filling out the questionnaire at the web page of a legal person, if the person has not verified its data with the electronic signature. A consistent application of such a rule would deny the legality of the Portal E-Governance for all the users accessing the portal without the electronic signature, only with the data of e-mail address.

An example of incomplete provision is evident in the provision ensuring that the purpose of data processing is not clearly defined, which is contrary to the basic principle of

⁴² Case 61496/08, BĂRBULESCU v. ROMANIA, judgement of the Council since 5 September 2017

⁴³ Case number 8806/12, AYCAGUER v. FRANCE, judgement since 22 June 2017

data protection that the data processing must be defined and limited. The LPDP ensures that the data processed for one purpose can be processed for “humanitarian needs”, and this term is not defined anywhere in the legal system of Serbia, while it is widely interpreted in practice. Therefore, the LPDP contains also the wording that “some provisions of this law are not applicable”, which is again an example of a corruptive norm, and therefore cannot be allowed.

As for the norms which are missing it is important to underline the fields such as video-surveillance, biometric data processing, and the procedure for exercise of the right to personal data protection, the procedure for transborder transfer of personal data, the supervision procedure. Also, having in mind the content of the General Regulation on Data Protection, this list should cover, as missing, also the provisions on the Commissioner’s powers, data security, analysis of risks for individuals’ rights in case of certain kinds of processing which may seriously prejudice individuals’ rights, a duty of data controllers to report to the Commissioner any breaches of data security, and so on. For the need of the entire presentation of the internal legal framework, this report should also mention that the LPDP has been amended three times since its adoption. The first time, when the Data Secrecy Law (“Official Gazette of RS”, no 104/2009) was enacted, on the basis on which provisions of Article 45, paragraphs 2-4 of the LPDP were repealed, which referred to the unlawful limits of access to a body performing surveillance over the implementation of the regulations. The second time, pursuant to a judgement of the Constitutional Court of Serbia that declared certain provisions of the LPDP unconstitutional, which were passed following the motion by the Commissioner, and referred to the possibility of data processing based on the by-laws. In the end, the third time in a form of an amendment regarding permissibility of change of the purpose of personal data processing when it comes to the humanitarian needs, which, contrary to the legislator’s intention, proved to be a provision that makes the implementation more difficult, rather than facilitating it, since it is, at the same time, an example of undefined purpose.

Furthermore, the inappropriate internal legal framework for personal data protection is reflected also only in the inappropriate sector-level laws. Namely, it is necessary to amend numerous sector-level laws which as a rule incompletely regulate personal data processing in specific sectors, while certain sector-level laws do not regulate this subject matter at all. This need was pointed out by the Commissioner in 2010 as a result of a joint work with the Commissioner for Information of Slovenia.

It should be also underlined that a number of laws, especially those enacted before LPDP, do not contain provisions that govern in an appropriate manner the subject matter of personal data collecting, keeping, processing and use, although this is a constitutional duty (Article 42, paragraph 2 of the Serbian Constitution); instead, the subject matter is often regulated by secondary legislation. In addition, implementing regulations often insufficiently or incompletely regulate technical and similar issues in connection with data processing activities, which should be regulated exactly by such enactments.

Another issue of the internal legal framework of personal data protection is the lack of certain by-laws which Serbian Government should have passed long time ago, but still has not done so. So far, the only implementing regulations passed on time were those which were under the responsibility of the Commissioner.

Serbian Government has not adopted the act on the manner to archive and the measures of protection of particularly sensitive data, for which adoption the defined deadline

expired on 4 May 2009. The Commissioner has reminded for numerous times about the delay of almost nine years. In addition, the Government should have adopted an Action Plan on Implementation of the Personal Data Protection Strategy, with specified activities, expected effects, implementers of specific tasks and periods for their completion, for which adoption the deadline was defined which expired on 20 November 2010. The Commissioner has also reminded for numerous times about the delay of more than seven years. It is the fact that the Strategy passed in 2010, is now obsolete and the new strategy should be passed.

2.1.3. (Non-)Enactment of a New LPDP

Due to numerous provisions of the Law on Personal Data Protection which are inappropriate or incomplete, and since certain issues are not even regulated at all, for several years, the Commissioner has on numerous occasions drawn the attention of the Government, in particular the Ministry of Justice, proposing specific solutions to overcome such situation.

With that regard, in the past, such solutions were proposed by the Commissioner which referred to the regulation of video-surveillance, so the Commissioner provided the Ministry with the provisions on video-surveillance as possible amendments to the Law on Data Protection. The failure to take the relevant measures by the competent bodies, primarily by Serbian Government, forced the Commissioner to independently draft a new Model Law on Personal Data Protection in October 2014. The Commissioner then submitted the Model Law to the Ministry of Justice, but a mere year later the Ministry of Justice prepared the Draft Law on Personal Data Protection which unfortunately had almost nothing in common with the Commissioner's Model Law, although this is a duty defined under the Action Plan for Negotiations for Chapter 23.

As in the meanwhile the General Regulation on Data Protection was passed, the Commissioner prepared a new Model Law on Personal Data Protection and submitted it to the Ministry of Justice in 2017, and then twice to the Prime Minister, since the Prime Minister was not familiar with the fact that the Commissioner had prepared the Model Law, not with the content of that Model.

In late 2017, Ministry of Justice prepared a Draft Law on Personal Data Protection for which, based on the Conclusion of the Board for the Legal System and Public Authorities of Serbian Government, 05 no 011-11658/2017 since 28 November 2017, a public debate was organised in the period from 1 December 2017 until 15 January 2018. The Commissioner provided the opinion on the text of the Draft in early 2018, in general and in details with the conclusion that the most rational solution would be to put forward the Model Law on Personal Data Protection prepared by the Commissioner, based on the facts and experience and the analysis of the implementation of the existing law on personal data protection, and aligned with the provisions of the General Regulation on Data Protection, into the official procedure of adoption, and, if necessary, to amend it with those solutions contained in the Draft Law which are acceptable, and which maybe are not contained in the Model Law. This proposal is also in line with the formalised obligation of the Ministry of Justice to prepare a Draft Law on Data Protection according to the Commissioner's Model.

Unfortunately, the current situation is such that the new law has not been passed yet, even though the deadline, with the years of delays, is defined in the Action Plan. The consequences of not passing this law on personal data protection are unfavourable at multiple

levels, for citizens and the economy of the Republic of Serbia, but also for the country in the process of the EU integrations.

2.2. Illustrative Cases of Thwarting the Right to Personal Data Protection Identified in the Supervision Procedure over the Implementation and Execution of the Law on Personal Data Protection

“F Diagnosis”

The Commissioner has conducted *ex officio* an inspection of the implementation of the LPDP by the Ministry of Interior as the personal data controller, regarding the processing of personal data of citizens treated based on the health code “F”. “.

The inspection was initiated by the letter of the General Hospital of Kikinda addressing the Commissioner and providing the act of the Police Branch Office of the Police Department of Kikinda Police Administration with the request to the director of the hospital to provide the data (name, surname, address) of the citizens who are treated based on the health code “F”, with the residence in the city of Kikinda, with the explanation that the data are necessary to act upon the Instructions on the manner of organisation and performance of interior affairs in the security sector, and for the update of the Files of the sector of the Police Administration of Kikinda. The mentioned Instructions was passed in 1997 by Minister Vlado Stojiljković.

Regarding that, the Commissioner warned the MoI that such data processing is illegal, that the Instructions may in no way be the grounds for data processing, especially because this is a particularly sensitive personal data, i.e. as such it is not allowed in terms of provisions of Article 16 and Article 18, paragraph 1, items 1, 3 and 8 of the LPDP.

MoI acted in line with the Commissioner’s Warning in the manner in which, in the period from 28 November 2017 until 7 December 2017, all police administrations, at the level of police stations/branch offices performed the deletion with the presence of a committee (by incineration and complete destruction) of the personal data processed in the files of sectors without the legal grounds and purpose.

“Zoran Živković”

In a session of the National Assembly of the Republic of Serbia, a Member of Parliament stated personal data on another MP Zoran Živković, on 28 June 2017, when it was noted that MP Živković was incapable for military service, stating the code of the medical diagnosis received “by facsimile from the army recruitment office”. He also said that MP Živković “in the state of the most difficult disorder of functions obtained the license for a gun”. In connection with the statement of these data, the Commissioner initiated *ex officio* inspection of the implementation and execution of the LPDP by the Ministry of Defence of the Republic of Serbia and the Ministry of Interior, as personal data controllers, in relation to the data collected on the basis of the Law on Military, Labour and Material Obligations and the Law on Weapons and Ammunition. Ministry of Defence stated that “there are no requests by other state authorities regarding the submission of any data on Mr Živković”.

Based on the identified factual state, the Commission lodged criminal charges with the First Basic Public Prosecutor’s Office in Belgrade, on 1 September 2017, under the number 072-04-2449/2017-07, against the NN official, employed in the Ministry of Defence, and the NN official, employed in the Ministry of Interior, because of the suspicion that 2 (two)

criminal offenses were committed – *Unauthorised collection of personal data* referred to in Article 146, paragraph 1, in connection with paragraph 3 of Criminal Code.

“Central Registry of Citizens of the Republic of Serbia”

The Commissioner has conducted *ex officio* an inspection of the implementation of the LPDP by the Ministry of Interior of the Republic of Serbia, and the Ministry of Public Administration and Local Self-Government of the Republic of Serbia, as personal data controllers, regarding the regulation of personal data processing – Agreements on Operational and Technical Cooperation (registered in the Ministry of Interior under the number 01-7968/17 since 7 August 2017, and in the Ministry of Public Administration and Local Self-Government under the number 20-00-00369/2017-26 since 4 August 2017).

The objective of setting up such a “Central Registry” is keeping a single electronic record on the citizens of the Republic of Serbia, regulated by several regulations, performed by the Ministry of Public Administration and Local Self-Government as an entrusted task. The mentioned unification of various collections of data is stipulated by the Agreements between the MPALSG and MoI and the Rulebook adopted by the MoI in 2015, which is in conflict with Article 42 of the Constitution of the Republic of Serbia and the Law on Personal Data Protection.

Based on the identified factual state, the Commissioner warned the data controllers (MoI and MPALSG) about the irregularities in personal data processing, since it is in conflict with the provisions of Article 8, item 1 of the LPDP, i.e. without a legal authorisation or consent of the person for the processing and without the conditions for processing of data by the public authorities referred to in Article 13 of the LPDP. The MPALSG stopped all further activities related to setting up and keeping of the Registry until that issue is resolved by the law. The MoI notified the Commissioner that warning it had acted in line with the received warning and that the data processing will start once the Law on Amendments to the Law on the Citizenship of the Republic of Serbia is passed.

Data Provision of the National Employment Service without Legal Grounds

The Commissioner has initiated a process of inspection over the National Employment Service (NES) regarding the assumption of a citizen who has stated that her data were given to the lawyer Nemanja Kovačević from Belgrade in an unauthorised manner, from whose office she was contacted with a call at her home phone number, regarding the free representation against the NES due to a wrong calculation of paid monetary benefit.

The Commissioner has warned the NES that it did not undertake appropriate data protection measures for the data contained in the Single Information System of the Register of the Unemployed Persons and the Use of Unemployment Compensation Benefit, nor did it agree, in the Contract on Bank Services Provision, the obligation of the “Postal Savings Bank” Jsc. Belgrade as a data processor, to protect these data in the same manner, thereby violating the provisions of Article 47 of the LPSP, which resulted in the unauthorised submission of the complainant’s data to lawyer Nemanja Kovačević from Belgrade.

NES in its explanation stated that it had acted in line with the Commissioner’s Warning, making an annex to the Contract on Bank Service Provision, defining the obligation

of the data processor “Postal Savings Bank” Jcs. To undertake the necessary protection measures, and that the NES Management Boards made a Rulebook on the Use of Computer-Communication Resources which defines the standards and conditions of a stable and safe operations which refer to the information system management, as well as storage, protection and safety of all the data in the NES information system.

Apart from the Warning, in connection with the facts identified in the inspection process, the Commissioner filed criminal charges with the First Basic Public Prosecutor’s Office in Belgrade because of the suspicion that the NN person in the capacity of a civil servant, employed in the NES, on the unidentified data in Belgrade, in the course of performing his/her duty, had communicated to a third person the personal data in relation to the use of the unemployment compensation benefit, and had used them for the purpose they were not intended for, and thus had committed a criminal offense of the unauthorised collection of personal data referred to in Article 146, paragraph 3, in relation to paragraph 1 of the Criminal Code.

Medical Documentation in a Public Place

The Commissioner has initiated the control process over the Community Health Centre “Odžaci”, based on the findings that there were some photos placed on social network Twitter and the statement of a citizen who said that the mentioned Community Health Centre had taken a cardboard box from their premises containing parts of medical documentation of three people, medical reports by specialists, and an envelope of the health record containing the data on health status which refer to those three people.

The Commissioner has warned the Community Health Centre “Odžaci” that it did not undertake the data protection measures, contrary to provisions of Article 47, paragraph 2 of the LPDP, which consequence was that the data on health status of former patients of the Controller were found in the cardboard box left under the eaves of the facility of “Factory First Aid Station” and, thus became available to the person who had taken photos of it.

The community health centre provided the explanation stating, inter alia, that the box in question, which contained useless paper and other material, by mistake contained a part of medical documentation which had fell out from the health record file in the course of transport, packaging and moving of the health records from the “Factory First Aid Station” to the archive.

The Commissioner, based on the facts identified in the inspection process, and the offense referred to in Article 57, paragraph 1, item 11) of the LPDP, has sent a Request for initiating a misdemeanour proceeding with the Misdemeanour Court in Sombor, because of the unsafe manner of keeping medical documents.

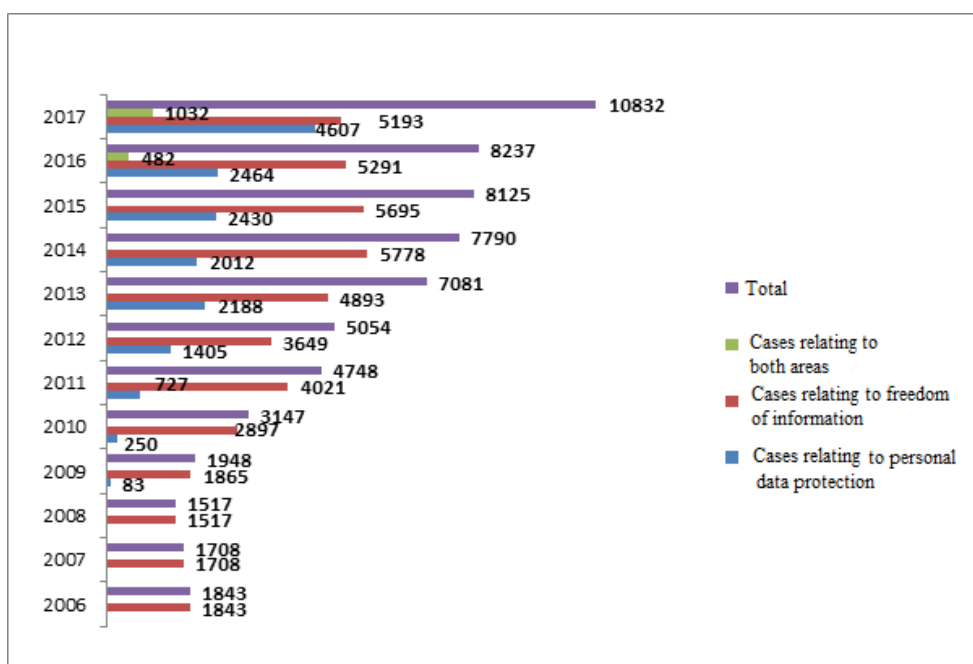
3. COMMISSIONER'S ACTIVITIES

3.1. Summary of Overall Activities

The workload of the Commissioner has been increased with years. It is best illustrated by the statistical data on resolved cases. The increase in the number of cases has continued in 2017. In **2017 the Commissioner received 10,832 new cases**, including 5,193 cases relating to freedom of information, 4,607 cases relating to personal data protection, and 1,032 cases relating to both areas of Commissioner's pending cases carried forward from the previous period (4,067). **In 2017, the Commissioner worked on 14,899 cases in total.**

The increase in the number of cases handled by the Commissioner is shown in the following graph.

Graph 1. Number of cases received by years



During 2017, the Commissioner closed 10,797 cases, including 5,150 cases in the field of freedom of information, 4,624 cases in the field of personal data protection, and 1,023 cases relating to both fields. There were 4,107 pending cases were carried forward to 2018 (3,593 – relating to freedom of information, 483 – relating to personal data protection, and 31 – relating to both areas of competence).

At the same time, in 2017, the Commissioner also worked towards improving the functioning of his office. The largest part of activities was performed within the two-year project from 2015, under the bilateral agreements between the Government of the Republic of Serbia and the Ministry of Foreign Affairs of the Kingdom of Norway, which is addressed in more detail in the chapter on the Commissioner's Office.

Of particular importance for this institution and other bodies are staff trainings and the obtaining of the highest certification level for the implementation of data safety standards –

SRPS ISO/IEC 27001, as well as the introduction of this standard in the work of the Commissioner in 2017. In addition to the previously certified 6 auditors (the highest level of certification for SRPS ISO/IEC 27001) and 7 managers for data safety, in 2017, another 5 employees were certified, including 2 for auditors and 3 for data safety managers.

Also, in 2017, 3 employees at the Commissioner's Office underwent security clearance checks, and were issued with the requisite certificates by the Office of the National Security Council which allow them to access classified data as "top secret" in accordance with the Law on Data Classification, so together with 21 employees who had been certified in the previous period, the Commissioner's Office now has 24 employees certified to access classified data, which they need for the normal exercise of their respective duties.

The increase of the visibility of the role and work of the Commissioner are a permanent task, which is realised through the media, internet presentations, Portal of Open Data on the Commissioner's Work, social networks, etc.

The Commissioner's Office and the commissioner himself received numerous awards of the professional and wider public for the work they do (16 formal awards and acknowledgments). In 2017, for the work on the transparency of the bodies and assistance to the media in performing their activities, the commissioner received the Online Media award "Balkan Insight", which gathers investigative journalists into a Balkan Investigative Reporting Network (BIRN) in all West Balkan countries, and which enlisted the current commissioner Mr Šabić in the annual list of "Balkan Heroes – People who saved 2017", people which "were courageous and acted unselfishly at the time when others did not".

The Commissioner's activities in 2017 concerned the following:

- **Handling of individual cases pursuant to complaints against violations** of the freedom of information and violations of the right to personal data protection; in this context, the Commissioner ruled on a total of **3.852 complaints** (3520 complaints – in the field of freedom of information and 332 – in the field of personal data protection);

- **Supervision** of implementation of and compliance with the Law on Personal Data Protection - the Commissioner has initiated 936 procedures, including: 187 pursuant to citizens' reports, 72 on the Commissioner's own initiative and 677 in connection with personal data files. The Commissioner closed a total of 953 **inspection procedures** as follows: for 19 cases petitions for institution of infringement proceedings were filed, for 3 cases criminal reports were filed, 600 cases were closed because it was found that previous inspection, warning or resolution was complied with, 271 cases were closed by notification according to Article 50 of LPDP on initiation of processing or formation of data files and in 60 cases it was found that LPDP was not violated and they were closed by official notes;

- **Opinions on draft laws and bills and other regulations** issued to public authorities, on request of authorities or on the Commissioner's initiative - a total of **79** (77 opinions concerning freedom of information and personal data protection and 2 opinions concerning status-related issues in connection with authorities and employees);

- **Provision of assistance to individuals and legal entities and to public authorities, i.e. data processors, in the exercise of rights** or proper implementation of LFAIPI and LPDP, through explanation of unclear issues and procedures - **1,048 opinions and answers** concerning proper implementation of both laws were issued, of which 898 on implementation

of LPDP and 150 on implementation of LFAIPI, as well as 39 instructions on compliance with LPDP;

- **Provision of assistance to citizens in connection with their requests** for access to information or personal data protection referred to the Commissioner by those authorities that do not hold the requested information, to ensure that their requests are forwarded to those who might be able to provide the required information of public importance or information in connection with personal data processing (**708 cases**);

- **monitoring compliance with a legal duty to publish information booklets, undertaking of measures** and provision of assistance to public authorities in connection with implementation of regulations on the improvement of transparency of work- **151 cases**;

- **Assistance in the training of employees** in public authorities and personal data controllers through the organisation of and participation in seminars, activities taken by the Commissioner to affirm the freedom of information and the right to personal data protection through **lectures** for students and other persons enrolled in university schools, academies and other institutions; **publications** with the views and opinions from the Commissioner's practice, as well as **posting of court decisions** and relevant decisions, views and opinions from the Commissioner's practice **on the website of this authority**;

- Activities within the framework of **international and regional cooperation**, as part of which representatives of the Commissioner took part in conferences, expert meetings and study visits of relevance for freedom of information and protection of personal data; the Commissioner also had several meetings and talks with representatives of other European and international institutions and neighbouring countries in connection with his sphere of competence; the Commissioner took part in the Advisory Committee of Convention 108 and has a member in the Bureau of the Advisory Committee of Convention 108 for the Protection of Individuals with regard to Automatic Personal Data Processing; the Commissioner took part in the Article 29 Working Party of the European Commission etc.;

- Activities relating to **Serbia's EU accession process - 24 contributions** to reports submitted by the Serbian Government, the Ministry of Justice, the Ministry of Public Administration and Local Self-government, the European Integration Office and the Council for Implementation of the Action Plan for Chapter 23;

- **Public announcements through which** the Commissioner communicated with the public on **93 occasions**;

- Activities in connection with **recording of data files entered in the Central Register** maintained by the Commissioner in accordance with the law (during 2017, 392 data controllers submitted 1347 personal data files) and on 31 December 2017 a total of 2,290 data controllers and 10,798 data files have been registered with the Register;

- **Responses to freedom of information requests** in connection with the Commissioner's work and responses to **requests for access to personal data processing** handled by the Commissioner - **210 cases**;

- Activities in connection with **enforcement of the Commissioner's decisions (342 cases closed and a total of 579 enactments passed)**;

- **Responses submitted to the Administrative Court with regard to legal actions** in administrative disputes (**67 cases**) against the Commissioner's decisions and failure to resolve complaints within the statutory time limit;

- Responses to the **citizens' petitions**, most of which relate to issues outside the Commissioner's sphere of competence (**438 cases**);

- **Copying of case files and notifications to the Administrative Inspectorate of the need for inspection** in cases where public authorities do not comply with the Commissioner's decisions (**251 cases**);

- The Commissioner received **17,881 calls** from citizens and members of the media, as well as employees of public authorities, for consultations on issues related to the exercise of the rights within the Commissioner's sphere of competence.

3.2. Commissioner's Activities in connection with Protection and Improvement of Right to Free Access to Information 33

In the field of freedom of information, the Commissioner handled 8, 738 cases in connection with the protection and improvement of rights in 2017. Of those cases, 3,545 were carried forward from 2016, while 5,193 were received in 2017. In 2017, the Commissioner resolved 5,150 cases, while the remaining 3,593 pending cases have been carried forward to 2018.

As regards the structure of resolved cases, the majority of complaints were lodged against authorities' failure to act on requests for access to information or against failure to provide information, so the majority of the Commissioner's activities and measures involved protection of rights in specific situations and enforcement of decisions passed pursuant to proposals submitted by citizens.

Other Commissioner's activities included the following: provision of assistance to citizens in the exercise of rights by giving opinions, clarifications for acting etc. in writing and to public authorities in implementation of laws; monitoring of compliance with a legal duty of authorities in connection with proactive publishing of information and information booklets and undertaking of measures in that regard; provision of opinions in connection with the passing of regulations and other legislative initiatives; organisation of trainings for employees in public authorities; preparation of publications and other forms of publishing Commissioner's views from the practice; participation in conferences and other expert meetings; communication relating to requests of information requesters filed with or forwarded to the Commissioner etc. The Commissioner also handled requests for access to information by which citizens and representatives of the media requested information of public importance generated in the Commissioner's work. In addition, he also replied to petitions relating to actions taken by other authorities and issues mostly outside the Commissioner's sphere of competence.

3.2.1. Statistics on Activities and Measures

Table 1 – Types and volume of Commissioner's activities and measures in 2017

No.	Types of activities and measures	Number
1.	Cases received	5,193
2.	Pending cases carried forward from previous year	3,545
3.	Total cases handled	8,738
4.	Resolved cases	5,150
5.	Complaints received	3,680
6.	Complaints resolved	3,520
7.	Opinions on implementation of LFAIPI ⁴⁴	150
8.	Opinions on draft laws and bills and draft other of other regulations ⁴⁵	79
9.	Responses to complaints to the Constitutional Court	51
10.	Responses to requests for information about the Commissioner's work ⁴⁶	206
11.	Responses to requests for information on the process of the proceedings on complaints	54
11.	Acting on requests for access to information relating to the operations of/held by other public authorities – the Commissioner informed the requesters about the procedure	202
12.	Motions for enforcement of the Commissioner's decisions	342
13.	Enforcement orders/conclusions issued	138
14.	Resolutions on penalties issued in the process of enforcement of decisions	97
15.	Total amount of fines imposed in the process of enforcement of decisions, in RSD	9,300,000
16.	Requests sent by the Commissioner to the Government for assistance / enforcement of his decisions	43
17.	Cases in which the Commissioner requested the administrative inspectorate to carry out an inspection and initiate infringement proceedings	251
18.	Number of resolutions staying the enforcement of decisions	298
19.	Written communication with public authorities in connection with the implementation of LFAIPI (advisory and instructional communications to authorities with the aim of increasing the transparency of their work and other communication)	655
20.	Replies to petitions against the work of public authorities unrelated to the Commissioner's scope	381

3.2.2. Protection of Right to Free Access to Information by the Commissioner

3.2.2.1. Handling of Complaints

The number of complaints formally lodged with the Commissioner has ranged between three and four thousand annually in the previous four years. In 2017, the Commissioner **received 3,680 complaints**, while 3,242 pending complaints were carried forward from 2016, so **a total of 6,922 complaints were handled in 2017**.

⁴⁴ Law on Free Access to Information of Public Importance

⁴⁵ The information refers to the total number of opinions from the Commissioner's scope

⁴⁶ It is the total number of cases, regardless of the field of work of the Commissioner the information refers to

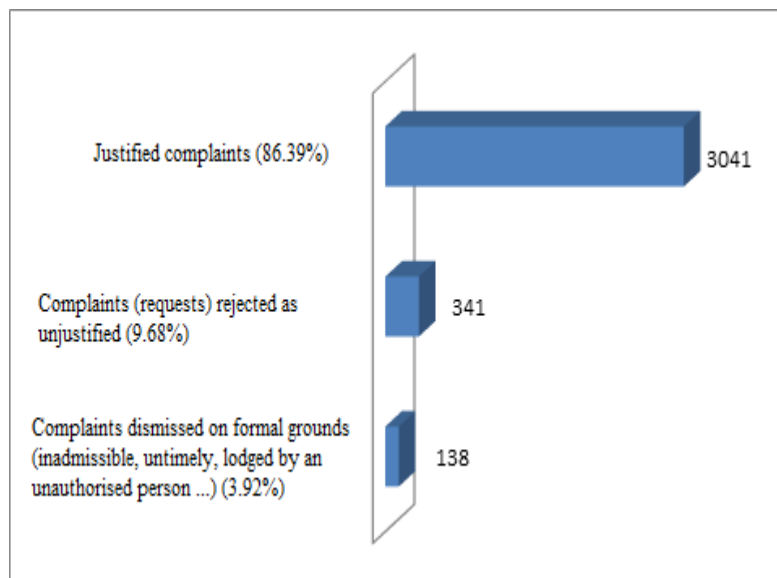
In 2017, the Commissioner resolved 3,520 complaints. In 2017 again there was a large number of cases where public authorities ignored received requests for free access to information or replied they cannot provide information. **Such cases of the so-called “administrative silence” accounted for 85.4% of resolved cases**, which is 1% more than in 2016. Only 514 complaints, or 14.6% of resolved complaints, were filed against decisions of public authorities which rejected the requesters’ freedom of information requests as unjustified.

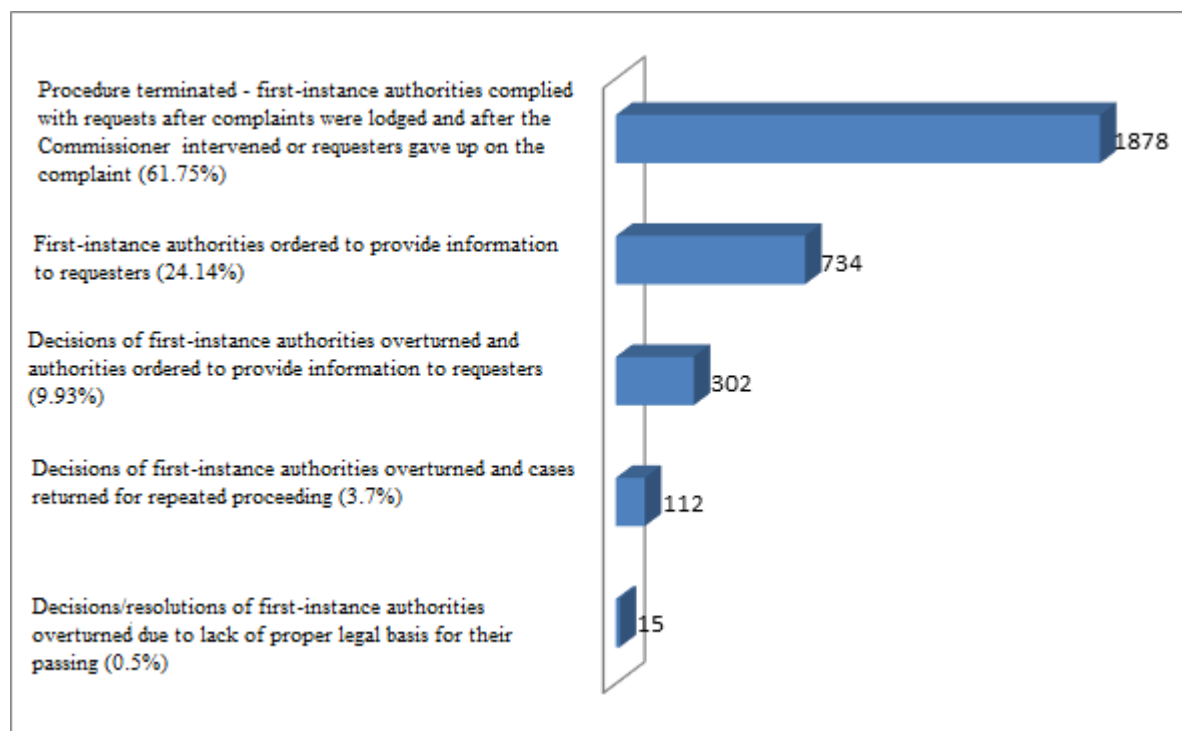
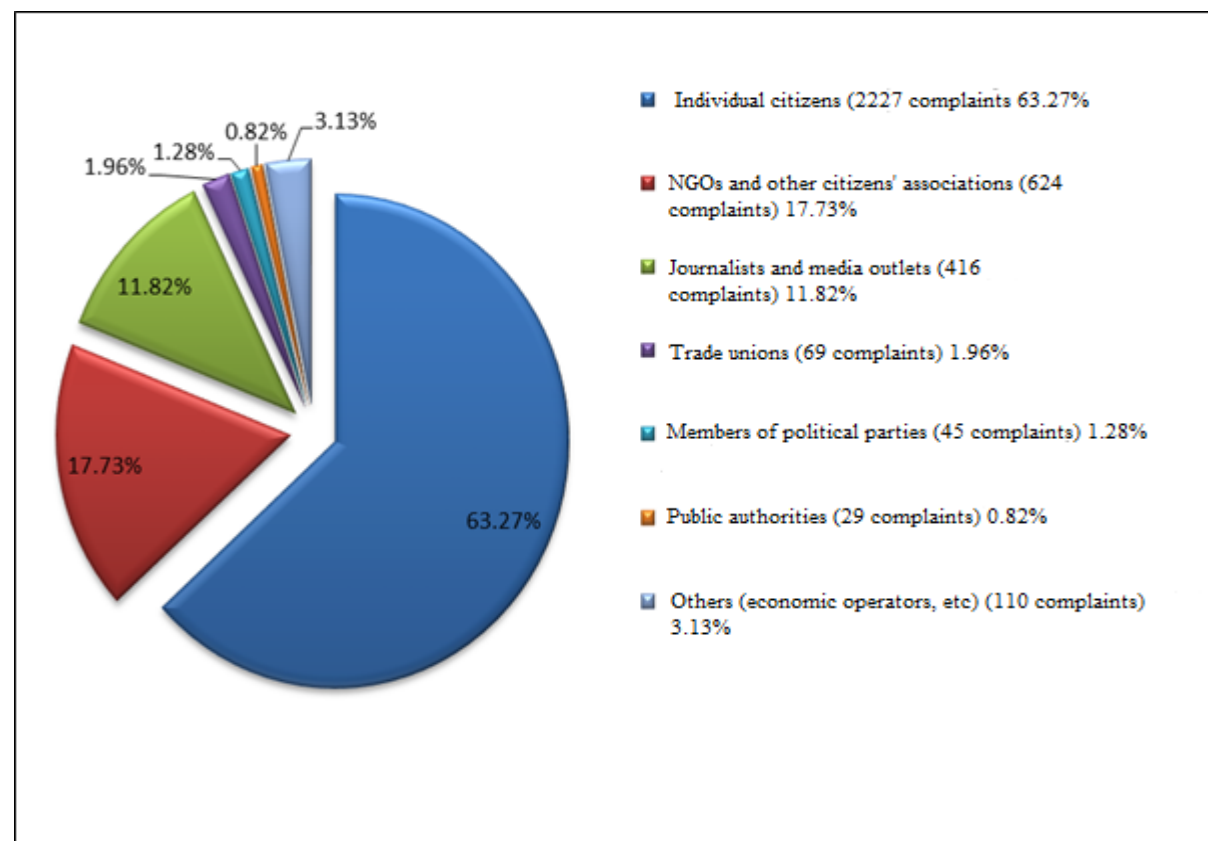
Complaints were mainly **justified**, namely **3,041** complaints or **86.4%** of the total number of resolved complaints (3,520). The number of complaints found to be justified by the Commissioner was by 1.3% lower than compared with 2016.

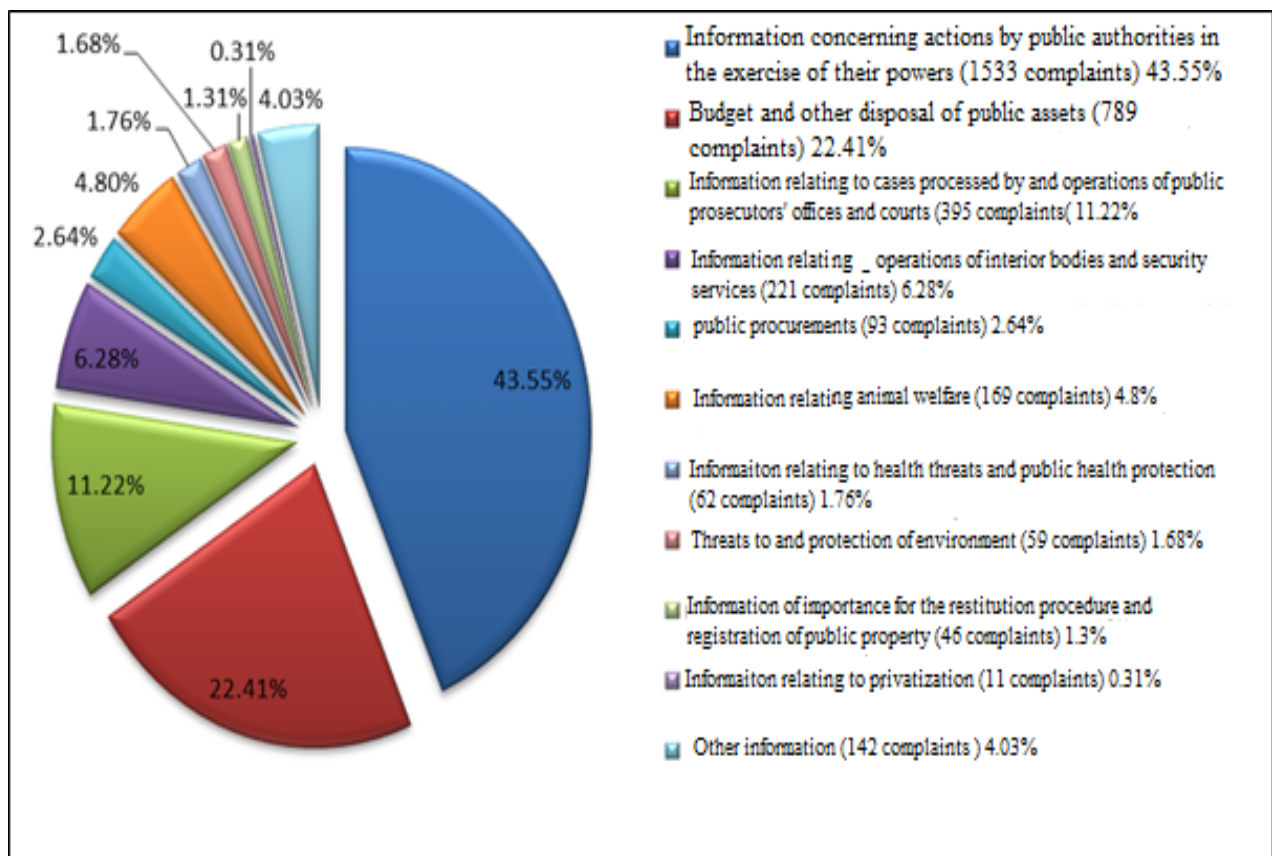
In 2017 again, as in the past years, justified complaints by citizens in a large number of cases ended in termination of the proceedings in 1,878 cases (61.8%) because the public authorities honoured the request made by the requester in the meantime upon learning of a complaint and after the Commissioner’s intervention, before the Commissioner passed a decision pursuant to a complaint, when in 1,082 cases, requesters formally gave up on the complaint. This shows that public authorities treat citizens poorly, have no accountability, disrespect laws and waste public funds.

The graphs below show to which information requests and complaints filed by requesters related in 2017, who requested information, against which authorities the complaints were lodged, what reasons public authorities invoked when they passed decisions rejecting information requests, decisions passed by the Commissioner in handling of complaints and how public authorities complied with the Commissioner’s decisions.

Graph 2. Decisions passed by the Commissioner pursuant to complaints in 2017

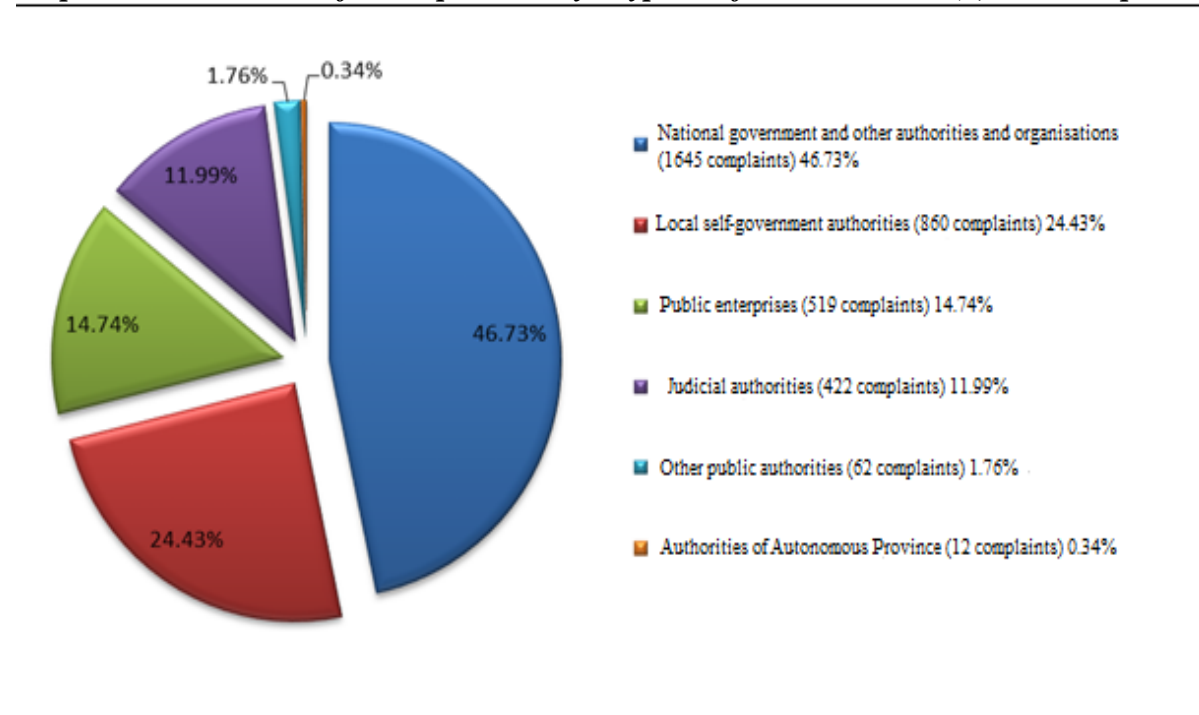


Graph 3. Commissioner's decisions pursuant to justified complaints**Graph 4. Complainants addressing the Commissioner**

Graph 5. Types of requested information that were the subject of complaints

In 2017 again there was a high percentage of complaints lodged by citizens as clients of public authorities in connection with acting on their submissions for the exercise of certain rights or in connection with their reports of certain issues that require interventions by competent authorities. In addition, citizens have difficulties in obtaining information on spending of funds from public sources.

About one half of complaints were lodged against national government and other authorities and organisations, of which 49.5% were lodged against ministries and bodies subordinated to them.

Graph 6. Number of complaints by types of authorities (3,252 complaints)**Table 2. Overview of requests and complaints filed in 2017 against ministries *with bodies subordinated to them*⁴⁷, on 1 February 2018**

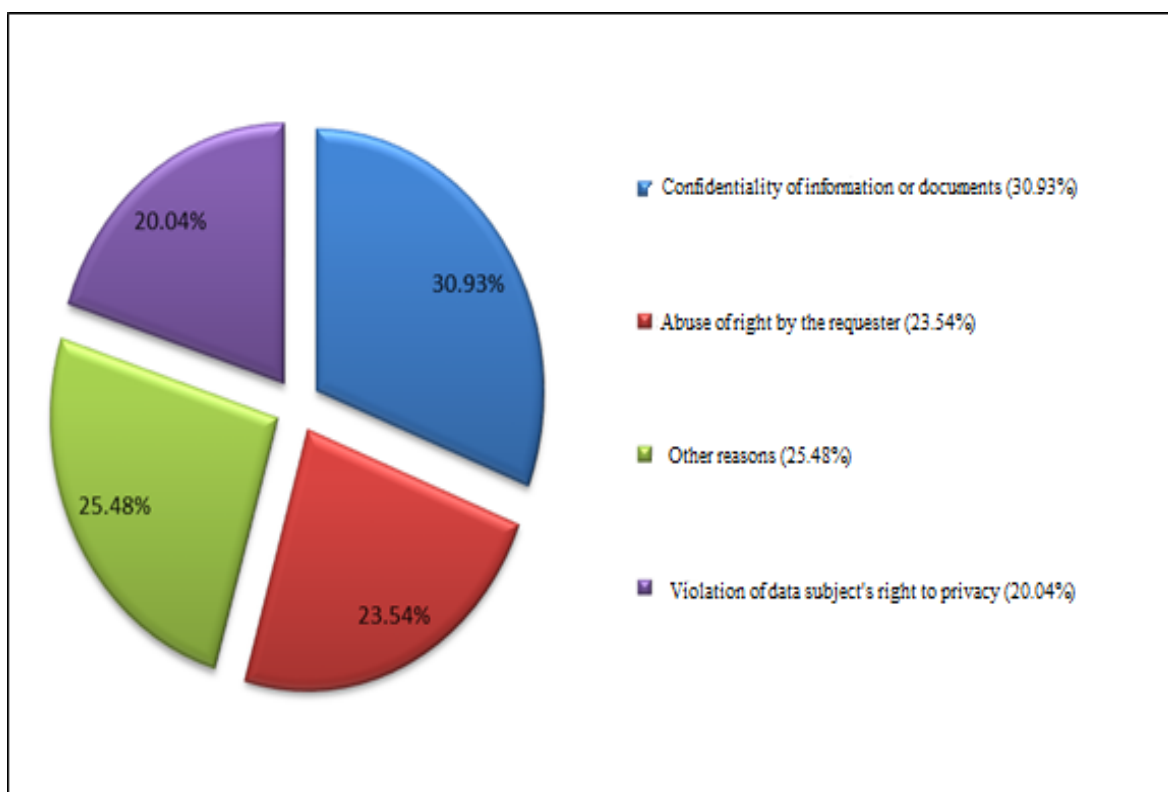
No.	Ministry	No. of requests	No. of complaints
1.	Ministry of Interior	2765	424
2.	Ministry of Finance	785	93
3.	Ministry of Agriculture, Forestry, and Water Management (previously Ministry of Agriculture and Environment Protection)	432	78
4.	Ministry of Justice	245	61
5.	Ministry of Construction, Transport, and Infrastructure	212	17
6.	Ministry of Education, Science, and Technological Development	251	23
7.	Ministry of defence	168	29
8.	Ministry of Health	163	22
9.	Ministry of Economy	368	13
10.	Ministry of Public Administration and Local Self-Government	192	6
11.	Ministry of Labour, Employment, Veteran and Social Affairs	188	20

⁴⁷ Report was not provided by the Directorate for the Administration of Seized Assets – Ministry of Justice.

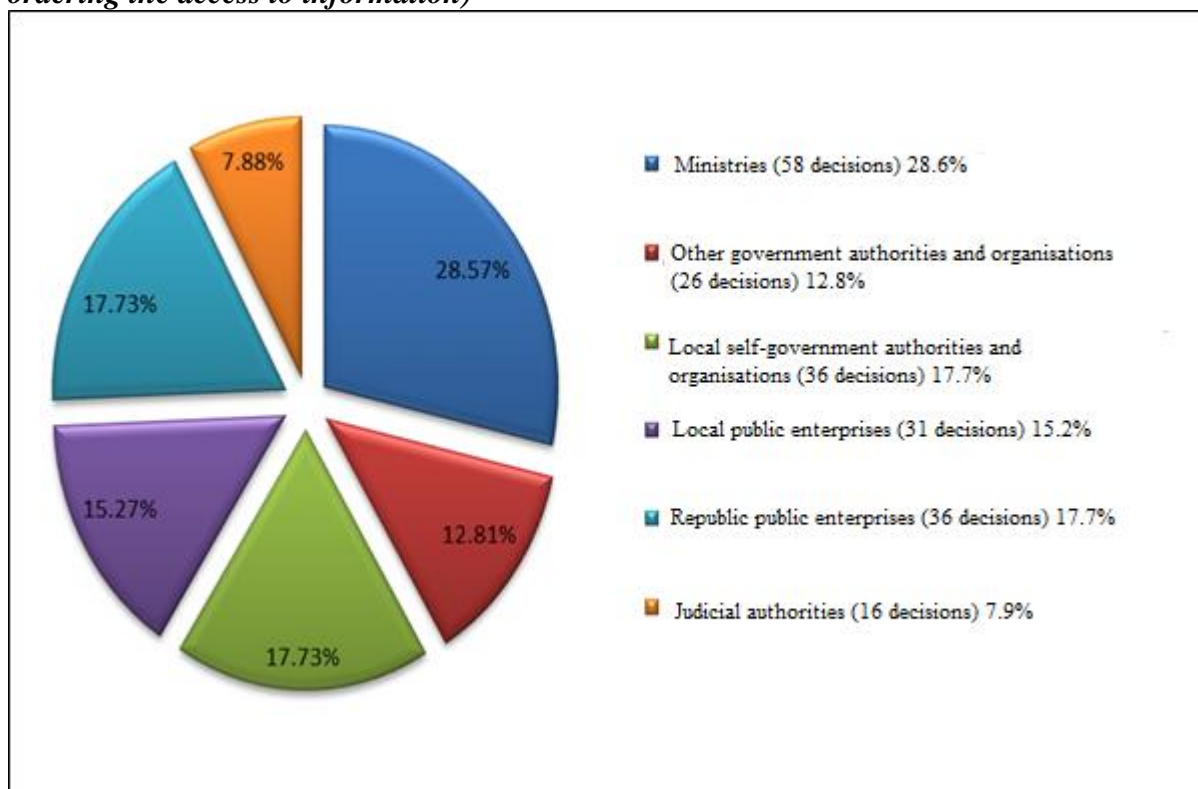
12.	Ministry of Trade, Tourism and Telecommunications	113	3
13.	Ministry of Culture and Information	58	1
14.	Ministry of Youth and Sport	69	6
15.	Ministry of Mining and Energy	70	5
16.	Ministry of Foreign Affairs	63	4
17.	Ministry of Environment Protection	124	9
18.	Ministry for European Integration	14	1
TOTAL		6280	815

Information in the table above shows that in 2017 on each 7.7 requests filed to ministries a requester complained to the Commissioner because he/she did not receive information. That ratio in 2016 was better, on complaint was filed on each 9.5 requests.

Graph 7. Reasons for rejection of requests



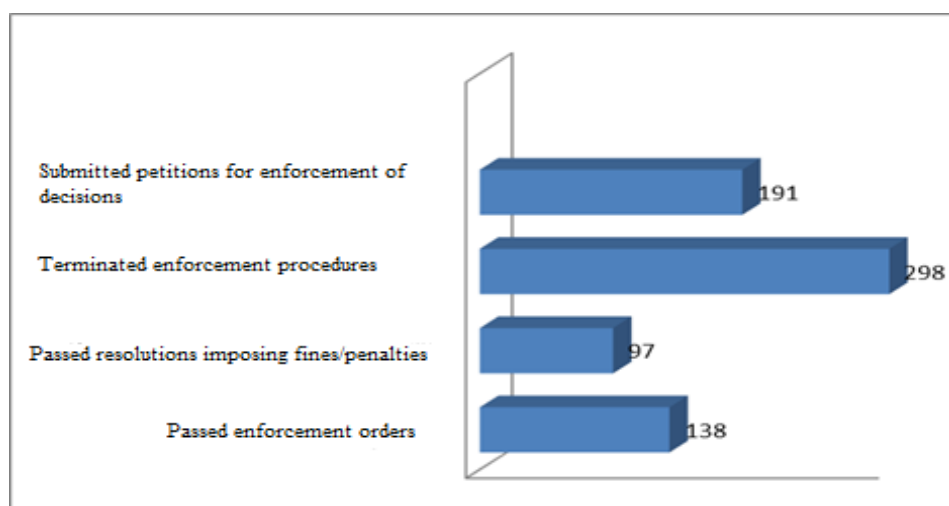
Graph 8. Number of Commissioner's decisions passed in 2017(203 of 917 passed decisions ordering the access to information)⁴⁸



3.2.2.2. Enforcement of Commissioner's Decisions

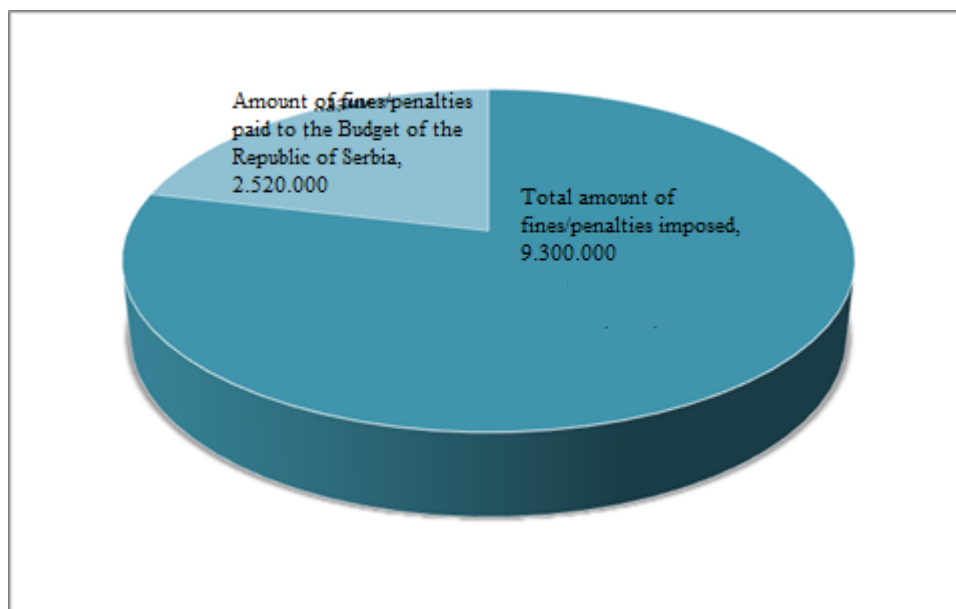
In 2017, the Commissioner received much more petitions from information requesters for enforcement of his decisions when public authorities refused to do so voluntarily. The graphs below show overview of measures undertaken.

Graph 9. Overview of petitions for enforcement of the Commissioner's decisions in 2017 and undertaken measures⁴⁹



⁴⁸ Integral part of the Report is the Overview of pending cases of the Commissioner passed in 2017 on 1 February 2018.

⁴⁹ Data on terminated cases and passed conclusions in 2017 refer to the cases from that and previous years.

Graph 10. Overview of imposed and collected fines⁵⁰

3.2.3. Protection of Rights before the Administrative Court

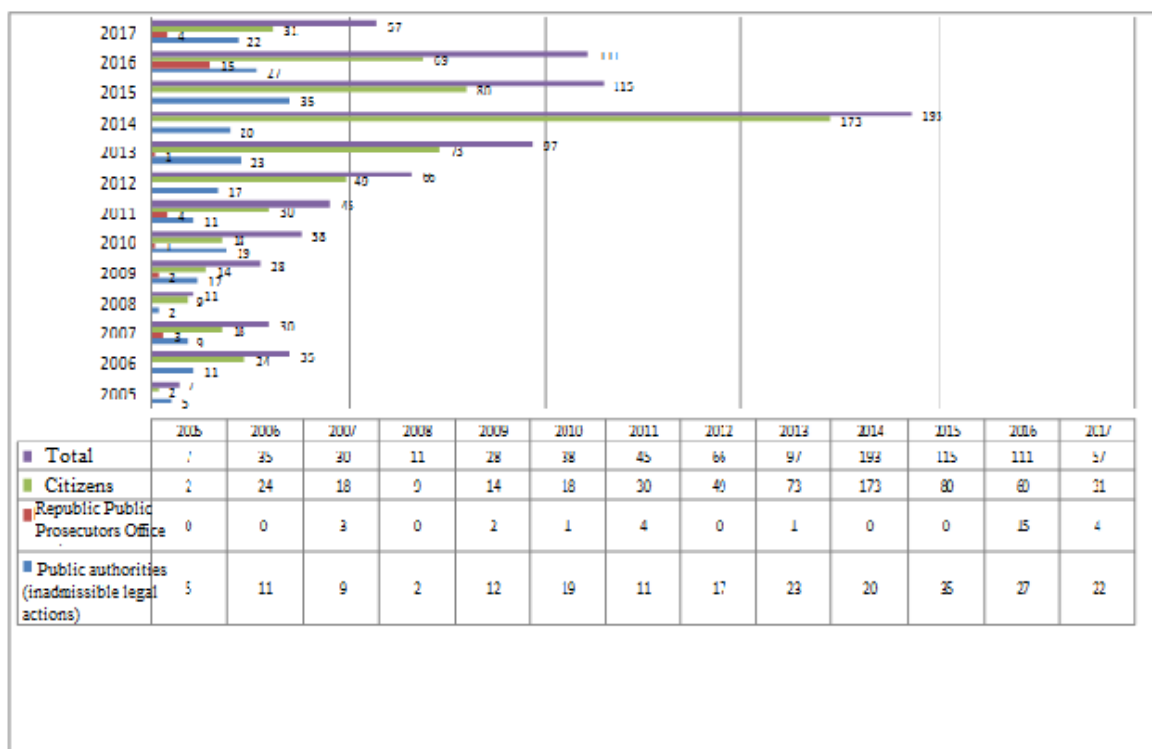
Judicial protection of the freedom of information **before the Administrative Court** in administrative proceedings is a remedy for reviewing the legality of decisions passed by the Commissioner and the six authorities against which complaints with the Commissioner are not admissible and which are exempted from protection before the Commissioner (the National Assembly, the President of the Republic, the Government, the Supreme Court of Cassation, the Constitutional Court and the Republic Public Prosecutor).

A complaint may be lodged with the Administrative Court by a party who is not satisfied with a decision and by the Republic Public Prosecutor in cases where a decision harms a public interest.

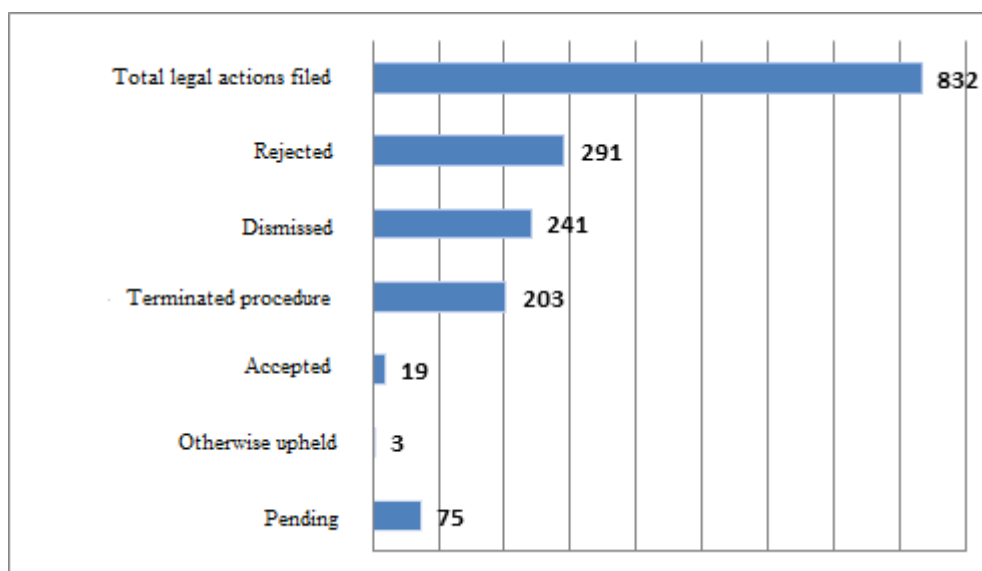
A party and the competent public prosecutor may file a motion for review of a judicial decision to the Supreme Court of Cassation against a final and enforceable decision of the Administrative Court. The Commissioner does not hold the data on filed motions with this court in 2017. In 2017, **the Constitutional Court** was filed 2 constitutional appeals against the Commissioner's decisions and the Court has not decided on them yet.

⁵⁰ Percentage of voluntary payment of fines in 2016 amounted to 73.5%, and in 2017 it was 27.1% due to the issues presented in this report.

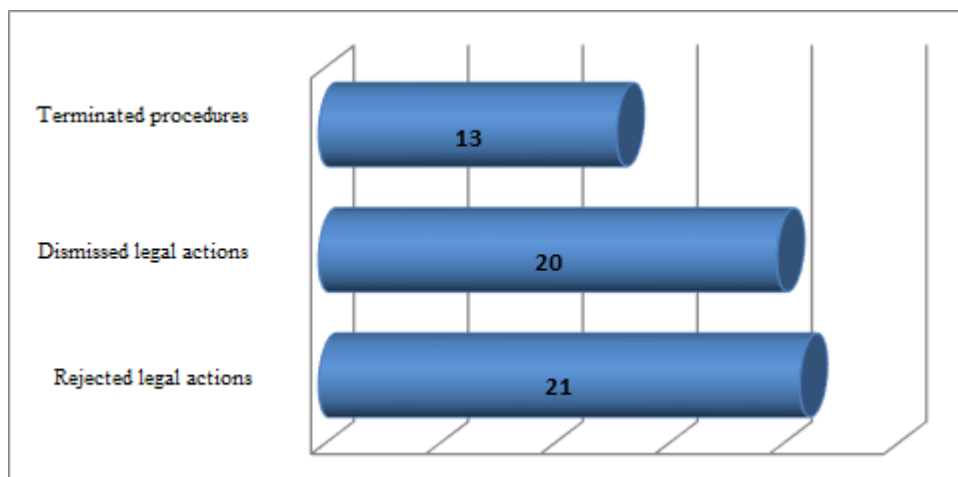
Graph 11. Overview of legal actions brought before the Administrative Court against the Commissioner's decisions by complainants, 2005-2017



Graph 12. Decisions of the Supreme or Administrative Court passed pursuant to legal actions against the Commissioner's decisions 2005-2017



Graph 13. Overview of decisions of the Administrative Court passed in 2017 pursuant to legal actions against the Commissioner's decisions

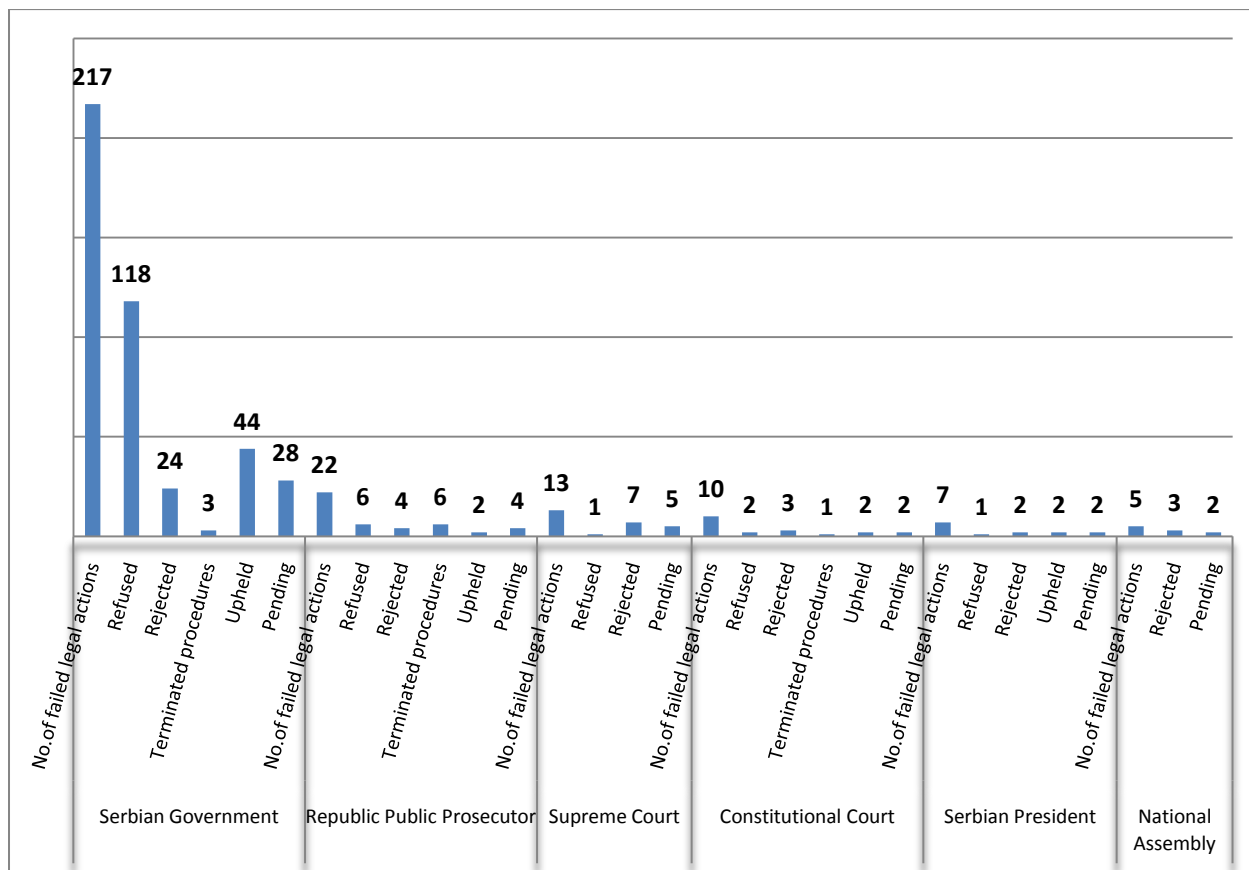


The outcomes of decisions against the Commissioner are indicative of a high level of legality and regularity of the Commissioner's decisions passed in 2017, since none of the Commissioner's decision passed in 2017 was overturned.⁵¹

Most of the legal actions against decisions or failure to act of the six highest state authorities against which complaints with the Commissioner are not admissible in the period 2005-2017 were filed against the Government of the Republic of Serbia, as can be seen from the graph below.

⁵¹ In the course of writing this report, the Commissioner was provided with two judgements by the Administrative Court which annul and return to a repeated procedure two Commissioner's decisions in 2016, judgements 15 Y.7083/16 and Y.7455/16, since 8 December 2017

Graph 14. Overview and outcome of legal actions brought before the Supreme or Administrative Court against decisions or failure to act of six highest state authorities against which complaints with the Commissioner are not admissible, 2005-2017



3.2.4. Compliance with Legal Duties by Public Authorities, Supervision and Accountability

The level of compliance with legal duties in terms of publishing of information booklets, organisation of trainings regarding the implementation of the Law on Access to Information for employees of public authorities which are subject to the legal duty to submit annual reports to the Commissioner was improved in 2017 at the general level by around 2%. The assumption is that this percentage is slightly higher, since in 2017 a fewer number of authorities provided reports than in 2016.

Data analysis only for the actions of administrative authorities and special organisations shows that the level of compliance with these legal duties was higher than the overall level of compliance by all authorities that are subject to them.

Table 3. Figures in reports of public authorities in general sense (authorities referred to in Article 3, paragraph 1, item 1) of the Law on Access to Information on compliance with legal duties - as at 1 February 2018

Public authority	No of public authorities	Report submitted Number and %	Information booklet published – number and %	Information booklet prepared, but not published – number and %	Training implemented – number and %	Maintenance of data storage media – number and %
Authorities referred to in Article 22 of the Law (National Assembly, President, the Supreme Court of Cassation, the Constitutional Court, Government, and the Republic Public Prosecutor)	6	6 (100%)	6 (100%)	/ (0%)	2 (33.33 %)	6 (100 %)
Ministries (without bodies subordinated to them)	18	18 (100%)	18 (100%)	/ (0%)	12 (66.66 %)	16 (88.88%)
Other public authorities and organisations (agencies, directorates, institutes, funds, chambers...)	307	163 (53%)	132 (43%)	12 (3.9%)	114 (37.1%)	152 (49.5%)
Courts	158	152 (96.2%)	134 (84.8 %)	14 (8.9 %)	84 (53.2 %)	126 (79.7 %)
Prosecutors' Offices	89	83 (93.25 %)	65 (73 %)	14 (15.7 %)	53 (59.5 %)	70 (78.6 %)
Authorities and organisations of the Autonomous Province of Vojvodina	36	24 (66.66%)	24 (66.66 %)	0 (0%)	17 (47.2%)	22 (61.1 %)
Local self-governments (cities/towns and municipalities)	205	166 (81 %)	160 (78 %)	2 (0.97 %)	105 (51.2 %)	155 (75.6 %)
Public enterprises (Republic and Provincial level) required to submit reports	33	27 (81.8 %)	23 (69.7 %)	/ (0%)	20 (60.6 %)	23 (69.7 %)
Other public authorities (educational institutions)	2054	147 (7.15 %)	114 (5.5 %)	19 (0.9 %)	91 (4.4 %)	119 (5.8%)
Total	2906	786 (27%)	676 (23.2 %)	61 (2 %)	498 (17%)	689 (23.7%)

Table 4. Figures from reports of public administration authorities on compliance with duties (as at 1 February 2018)

Public authority	No. of public authorities	Report submitted – number and %	Information booklet published – number and %	Information booklet prepared, but not published – number and %	Training implemented – number and %	Maintenance of data storage media – number and %
Ministries (without bodies subordinated to them)	18	18 (100%)	18 (100%)	/ (0%)	12 (66.66 %)	16 (88.88%)
Other public authorities and organisations (agencies, directorates, institutes, funds...)	307	163 (53%)	132 (43%)	12 (3.9%)	114 (37.1%)	152 (49.5%)
Total	325	181 55.69%	150 46.15%	12 3.69%	126 38.76%	168 51.69%

The Administrative Inspectorate of the Ministry of Public Administration and Local Self-government, responsible for supervision of implementation of Law on Access to Information, informed the Commissioner that administrative inspectors conducted 506 inspections of acting of public authorities on requests to access information, pursuant to Commissioner's decisions ordering provision of information to requesters and in connection with publishing of information booklets. Of 251 inspections of compliance with decisions, in 147 cases administrative inspectors found that the Commissioner's decisions were complied with, while 93 procedures are ongoing. In 2017, **administrative inspectors filed 11 requests for initiation of infringement proceedings** against failure to comply with decisions and in connection with the filed requests two judgements were made by the misdemeanour courts imposing the fines in the amount of 5,000 dinars and of 7,000 dinars.⁵²

There is still no liability for non-compliance with legal duties, while liability in public authorities for failure to act on information requests is almost symbolic compared with the level of ignoring of requests and the number of justified complaints lodged with the Commissioner.

According to the data of 41 misdemeanour courts in Serbia, providing the data to the Commissioner, **in 2016 initiation of infringement proceedings against violation of freedom of information with misdemeanour courts was in 383 requests**, while it was much more often requested by requesters as injured parties (363 requests) than by the Administrative Inspectorate (20 requests), which supervises implementation of the Law on Access to Information under the law.

⁵² Letter of Administrative Inspectorate no 011-00-00031/2017-06 since 18 January 2018

Table 5. Overview of requests for initiation of infringement proceedings ⁵³ against infringements under the Law on Access to Information and outcomes before first-instance misdemeanour courts from 2017 ⁵⁴

Misdemeanour court	Petitioner	Legal qualif. of Art.	Number of requests submitted	Convincing judgement- Amount of fines in RSD	Caution	Termination	Dismissal	Exonerating judgement	Termination due to expiry of statute of limitations	Resolved by other means
Belgrade	Injured party	46	117	6x10.000 1x15.000	1	18	20	6	11	
		47	1							
		48	1							
	Administrative Inspectorate	46	12	5x10.000 1x25.000 1x40.000	3		1	3	6	
		47				1				
Subotica	Injured party	46	7	1x5.000			1			
Bečej	Injured party	46	2							
Smederevo	Injured party	46	1							
Sombor	Injured party	46	22							
Požega	Injured party	46	2						2	
Šabac	Injured party	46	1				1			

⁵³ The table shows the number of requests submitted in 2017, but the request from the previous period were also resolved.

⁵⁴ Misdemeanour courts which did not have requests: Čačak, Gornji Milanovac, Zaječar, Zrenjanin, Kragujevac, Kikinda, Pirot, Obrenovac, Raška, Novi Pazar, Arandelovac, Negotin, Jagodina, Sremska Mitrovica, Trstenik, Preševo, Mladenovac, Paraćin, Kruševac, Senta and Sjenica.
The data were provided to the Commissioner by the misdemeanour courts: Valjevo and Užice

	Administrative Inspectorate	46	1	1x10.000						
Prijepolje	Injured party	46	1	1x20.000						
Pančevo	Injured party	46	1							
Loznica	Injured party	46	1							
Požarevac	Injured party	46	3			1		1		
Leskovac	Injured party	46	3						2	
Niš	Injured party	46	2							
	Administrative Inspectorate	46	2							
Ruma	Administrative Inspectorate	46	2							
Prokuplje	Administrative Inspectorate	46	1							
Kraljevo	Administrative Inspectorate	46	1	1 x 5.000						
	Injured party	46	1							
Vranje	Injured party	46	138			2		7		1
Novi Sad	Administrative Inspectorate	46	1							
	Injured party	46	36						1	
Lazarevac	Injured party	46	1							
Vršac	Injured party	46	2							
Bačka Palanka	Injured party	46	20	3x5.000 1x7.000 1x10.000				6		

Aggregate data

Requester	Legal qualification of Article	Number of filed requests	Convicting judgement	Caution	Termination	Dismissal	Exonerating judgement	Suspension due to expiry of statute of limitations	Resolved by other means
Injured party	46	361	17 ⁵⁵	1	21	22	20	15	1
Injured party	47	1							
Injured party	48	1							
Administrative Inspectorate	46	20	9	3		1	3	6	
Administrative Inspectorate	47				1				
TOTAL		383	23=262.000 5 x 5.000 1x7.000 13 x 10.000 1 x 15.000 1 x 20.000 1 x 25.000 1 x 40.000	4	22	23	17	21	1

⁵⁵ Four cases were resolved together.

The data on the amount of imposed fines from the misdemeanour courts providing data to the Commissioner, show that the average of the imposed fines is around eleven thousand dinars, which means that it is closer to the lower limit of fines referred to in the Law on Access to Information, defined in the amount from 5,000 to 50,000 dinars.

According to the data of the Misdemeanour Court of Appeal, in 2017 this court handled 124 cases pursuant to legal actions against decisions of misdemeanour courts in the subject matter of freedom of information. The largest number of legal actions were initiated by injured parties (89), then accused parties (32) or both (3). The misdemeanour court of appeal adjudicated as follows: 3 legal actions were dismissed, in 39 cases the first-instance decisions were upheld, in 46 cases the first-instance judgement was cancelled and in 36 cases first-instance decision was reversed.

The data of the Misdemeanour Court of Appeal show that, unlike the Administrative Inspectorate which, in 2017, lodged the requests for the initiation of misdemeanour proceedings only because of the non-execution of the Commissioner's decisions, the injured parties mostly initiated legal actions due to the non-action of the authorities upon their requests to access information, but also due to the denial of information in the requested form or prevention to exercise the right by other means.

Of 124 analysed decision of the Misdemeanour Court of Appeal, in 22 cases the first-instance decision was made that the expiry of the statute of limitation occurred for the misdemeanour prosecution, while in a significant number of cases the expiry of the statute of limitation occurred due to the non-action of the misdemeanour courts. Therefore, for example, in ten judgments it is stated that the expiry of the statute of limitation occurred since two years passed from the moment of committing the offense until the submission was filed with the Misdemeanour Court of Appeal or that the misdemeanour court failed to make a decision to initiate a misdemeanour proceeding within one year. **Furthermore, one should bear in mind that 46 decision were cancelled and returned to a repeated process of decision making, so it is a big probability that in those cases the expiry of the statute of limitations will occur.**

Upon legal actions of accused parties, the Court in the first-instance decisions mostly upheld (16), reversed 7 decisions, and cancelled 8 and one was dismissed. Upon the legal actions of injured parties, the Court in the first-instance decisions mostly cancelled (38), and reversed (26), while 23 decision were upheld and two complaints were dismissed.

3.2.5. Commissioner's Activities in connection with Publishing of Information Booklets

The Law on Access to Information sets out the duty to proactively publish information for a certain category of public authorities. According to the Law⁵⁶ and the Instructions on Preparation and Publication of Information Booklets on the Work of Public Authorities⁵⁷, , this duty implies preparation and publishing of the document named information booklet on official websites of authorities, under the name Information Booklet on the Work. The aim of publishing information booklets and the duty to regularly update information (at least once a

⁵⁶ Art. 39 of the Law on Free Access to Information of Public Importance ("Official Gazette of RS" no120/04, 54/07, 104/09 and 36/10)

⁵⁷ Instruction for the creation and publication of the information booklets on the work of public authorities ("Official Gazette of RS", no 68/10).

month) is to make available to citizens, the media, public authorities and other users the most important information on operations of authorities, human resources and other capacities of authorities, organisation of authorities, their powers, assets, spending of public resources, salaries, state aid, subsidies, grants, international and other projects and their implementation, public procurements, the types of services they render and procedures for the exercise of rights, available remedies in case of negative outcome before the authority concerned, types of information available to the authorities etc. It is stipulated that state authorities which does not hold, or rent or use a webpage, shall be obliged to ask from another relevant state authority (e.g. from the authority entrusting the performance of public powers, authorities performing control over that authority, or similar) to publish the information booklet on the work at its own webpage.

In 2017, the Commissioner analysed the compliance of legal duties and publishing of information booklets of all public prosecutor's offices.

With the inspection of the state in the first half of 2017, it was identified that out of 89 public prosecutor's offices in Serbia⁵⁸, the information booklets on work was created by only 27 public prosecutor's offices. Furthermore, none of the published information booklets was aligned with the Instructions not on the basic level, which is why the Commissioner pointed out the mistakes to all of them separately, with the possibility to make a statement on that.

One of the important reasons of such a situation is the fact that 71 prosecutor's offices did not have the official webpage, including one of the highest ones – Appeal Public Prosecutor's Office in Belgrade. The remaining 18 prosecutor's offices published on their webpages the information booklets on the work, and nine others which did so on the webpages of the prosecutor's offices on the higher level.

Upon the subsequent inspection of the situation in the last quarter of 2017, with leaving enough time for the elimination of irregularities, the Commissioner **identified that a large number of prosecutor's offices created and published the information booklets, 85 of them. The remaining four prosecutor's offices submitted their information booklets to the Republic Public Prosecutor's Office for the purpose of publications, but until the day of creation of this report they were not published on that webpage⁵⁹.** These prosecutor's offices provided their information booklets on the work to the Commissioner as well, in the form of an e-mail or in hard copy, though from the point of view of the proactive publication of the information booklets, they have not served their purpose so far.

In addition to the significant progress in the quantitative sense, the quality of published information booklets, unfortunately, still deviates from the standards and almost in all cases, except from two⁶⁰, there are grounds to make a decision ordering the content of the information booklets to be aligned with the stipulated one.

⁵⁸ In the total number of 89 public prosecutor's offices in Serbia (58 basic, 25 higher, 4 appellate, the Prosecutor's Office for Organised Crime and the Prosecutor's Office for War Crimes) are not included in the Republic Public Prosecutor's Office which is in the category of six highest authorities referred to in Article 22, paragraph 2 of the Law, in relation to which the Commissioner has no power to undertake measures referred to in Article 25 of the Law.

⁵⁹ Those are: Higher Public Prosecutor's Office in Pančevo, Higher Public Prosecutor's Office in Valjevo, Basic Public Prosecutor's Office in Lazarevac, and Basic Public Prosecutor's Office in Minonica.

⁶⁰ Higher Public Prosecutor's Office in Novi Sad and Basic Public Prosecutor's Office in Požega.

The deficiencies of the information booklets of the public prosecutor's offices, to a large extent, are reflected in the following:

- **structure of a large number of information booklet does not correspond to the defined one.** In majority of cases it was possible to identify only a similarity with the given content, while a large number of obligatory parts with defined data had not been even made. In the allowed additional parts, important data are entered, which should be in the basic, obligatory parts (e.g. "Clerk's Office", "Accounting", "Deliver Service", "Basic Data on the Information Booklet and Public Authority", "Deputy Public Prosecutor", "Working Time", etc.);

- data in the information booklet **are not updated regularly, in line with the Instructions⁶¹ so they do not meet the reliability requirement;**

- most often **there is no list of the types of data held by the public prosecutor's office and to which it ensures the access**, even though, based on the nature of activities, they are rather interesting for the public, and at the same time can be confidential due to investigations and for personal data protection;

- **data on the budget are either missing or are incomplete**, regardless of the fact that indirect budget users have a restrained access to funds, they can, on monthly basis, update the information on which funds they used and how much they spent.⁶²

- **data on carried public procurements are mostly missing;**

- **data on salaries are shown in a very small number of cases;**⁶³

- **information booklet** as a "living" document presenting current data and law-based information, **is often seen as a report on the work for the previous year.**

As for the realisation of the purpose of the Law and the publication of the information booklets, the biggest mistake is still the publication of a wrong information related to the exercise of the right to access to information. Almost all public prosecutor's offices stated that the requesters have no right to complaint against the conclusion rejecting the request as improper, which is not in line with the Law.⁶⁴ Also, provisions of Articles 9, 13, and 13 of the Law, defining the interests for which it is possible to restrict the right to access to information of public interest, are interpreted so as if they are absolute exemptions, without putting them in the context of provisions of Article 8 of the Law, which is the only the only correct way. Some public prosecutor's offices, contrary to the law, requested additional requirements for the requesters, that he must prove personal identity using personal documents, i.e. providing a copy of the document together with the request.

⁶¹ Item 17 of the Instructions – Public authority is obliged to regularly inspect the accuracy and completeness of the data published in the information booklet and, not later than the end of each calendar month, enter all the changes occurred during that month.

⁶² Only 20 prosecutor's offices presented the 2016 and 2017 budget data, while sometimes those data are incomplete.

⁶³ Only 23 prosecutor's offices presented the data on salaries.

⁶⁴ According to Article 22, paragraph 1, item 1) of the Law on Free Access to Information of Public Importance, the requester may file a complaint with the Commissioner if the government body rejects or dismisses the requests, and according to item 40, paragraph 3, sub-item 9 of the Instructions, the obligation of the government body is to enter the data in the part of the information booklet "Information on Submission of the Request for Access to Information" that the requester has the right to complaint, i.e. right to initiate administrative proceeding, against the conclusion to reject the request as improper.

When it comes to the obligation of the state authority holding a webpage to publish the information booklet provided to it by a state body of lower power since it does not have its own webpage, an issue was identified on the webpage of the Republic Public Prosecutor's Office. Namely, on the webpage of this prosecutor's office the information booklets of other prosecutor's offices are published not in an orderly manner, since at the same place there are several information booklets of the same prosecutor's office with different dates of the last update, in the manner which makes it really difficult to identify which of the published information booklets contains the latest data..⁶⁵

There are information booklets which stand out with their content from the extremely poor average, but they also fail to present all the defined and/or updated data..⁶⁶

It can be concluded that, when it comes to the respect of the rights and obligations of the proactive publications of information by public prosecutor's offices, the situation is not satisfactory without the application of measures by the Commissioner. In many aspects of respecting the obligations of the proactive publication of information, out of all controlled bodies so far, public prosecutor's offices are in the group of state authorities with the lowest level of execution. In addition to generally known facts on the material position and electronic equipment of public prosecutor's offices, the lack of accountability for implementing these legal obligations is the main reason of the presented situation.

Measures taken by the Commissioner give visible results, but further quality maintenance requires continuous monitoring and undertaking of measures, which is almost impossible, having in mind the capacities of the Commissioner and the number of bodies subject to the implementation of these legal obligations.

In that respect it is very important to have emergency amendments to the Law on Access to Information, in line with the Commissioner's initiative, and then the Commissioner's Instructions, in order to identify the publication of information booklets of state bodies in the digital form, in the joint electronic platform, which should bring to a higher level of transparency and easier monitoring of this legal obligation.

3.3. Commissioner's Activities in connection with Personal Data Protection

3.3.1. Commissioner's Actions in Oversight

In the course of 2017, there was an increase in the number of initiated and terminated inspection procedures over the implementation and execution of the Law on Personal Data Protection. Unfortunately, that is the consequence of the fact that problems in this field have been piling up for years due to anachorism, outdated and inadequate Law on Personal Data Protection, but also due to inadequate legal framework in general: the non-existence of the action plan for the implementation of the Strategy for Personal Data Protection, which, in the meanwhile, itself became outdated as well; and the improper actions of competent authorities, primarily courts and prosecutor's offices.

⁶⁵ For example, several information booklets were published on the work of the Appellate Public Prosecutor's Office in Belgrade, Basic Public Prosecutor's Office in Obrenovac, Basic Public Prosecutor's Office in Despotovac.

⁶⁶ Information booklet on HPPO in Novi Sad is largely aligned with the law, but the data on the realisation of 2017 budget are missing. Among very good information booklet are those of BPPO in Požega, then of BPPO in Obrenovac, BPPO in Subotica, HPPO in Subotica, and First BPPO in Belgrade, though there are delays in the update of information.

In the course of 2017, the Commissioner initiated 936 inspection procedures, including: 187 pursuant to citizens' reports, 72 on his own initiative and 677 in connection with personal data files. The Commissioner also carried out 603 preliminary checks of personal data processing activities, during which no irregularities were found in 271, while in 332 cases irregularities were identified, which he pointed to the attention of the data controllers concerned by issuing warnings under Article 50 of LPDP.

During the course of 2017, the Commissioner closed a total of 953 inspection procedures, of which 715 were initiated in 2017 and 238 were initiated in the previous period, as follows: in 600 cases it was found that the inspected entity complied after the inspection; 271 cases were closed with notifications pursuant to Article 50 because no irregularities were found; 60 cases were closed with official notes because it was found that no violations of the LPDP had been committed and no grounds existed for conducting inspections; 19 cases were closed by petitions for initiation of infringement proceedings, and 3 cases were closed by filing criminal charges.

In cases where the Commissioner found violations of LPDP (462), he:

- issued 435 warnings,
- issued 5 decisions,
- filed 19 petitions for institution of infringement proceedings for violations of LPDP,

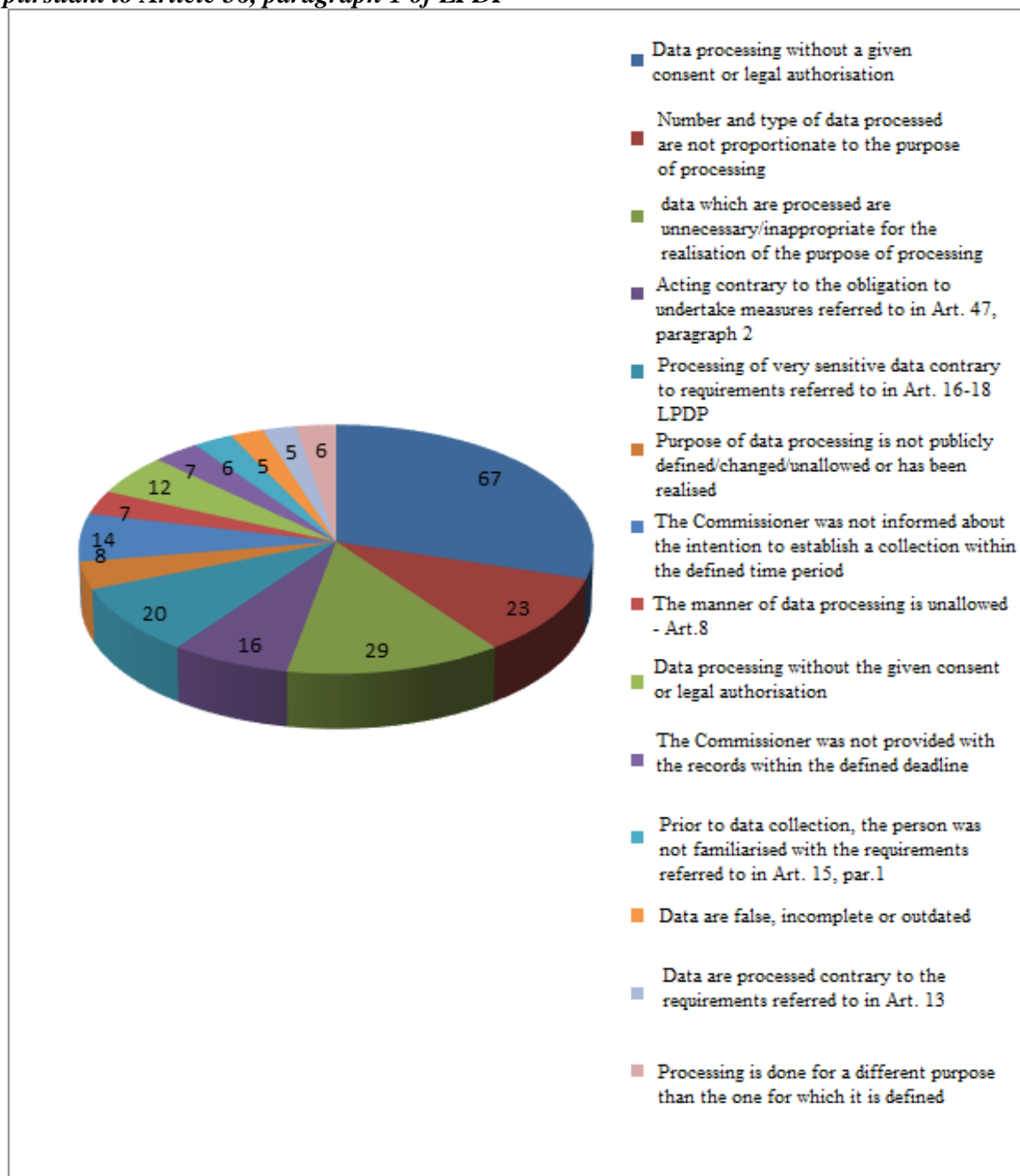
and

- filed 3 criminal reports

In 435 cases the Commissioner issued warnings after he found violations of LPDP, of which 332 warnings pursuant to Article 50 of LPDP (preliminary check of processing activities) and 103 warnings pursuant to Article 56 (Commissioner's powers to take certain measures after he finds violations of the law during inspections).

In 103 warnings issued pursuant to Article 56 of LPDP, there were 230 irregularities identified, which means that in certain cases the Commissioner identified one or more violations of the law.

Graph 15. The most commonly identified irregularities due to which a warning was issued pursuant to Article 56, paragraph 1 of LPDP



In 2017, the inspection procedures over the implementation of the LPDP, which started in 2016, were finished, covering public utility enterprises on the territory of the City of Belgrade, when non-allowed personal data processing was identified in the form of legally unjustified collection of copies of personal identification documents of citizens, which is why the Commissioner issued warnings to these enterprises.

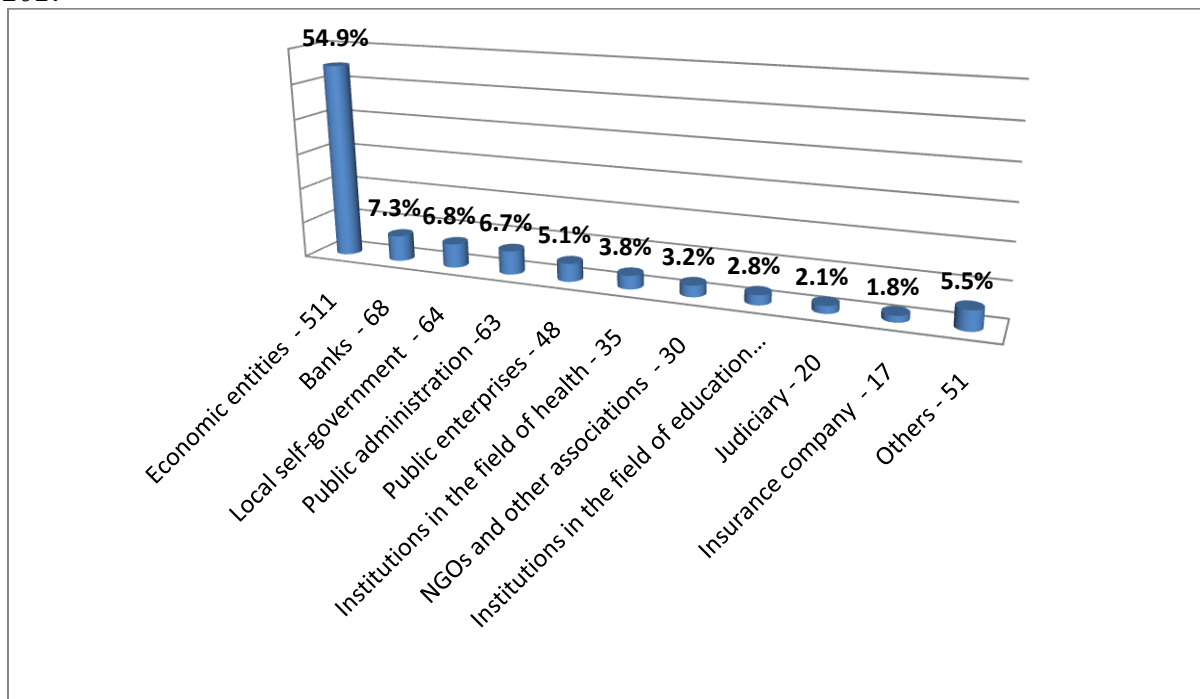
The scheduled inspections started in 2016 covering also the supermarket chains that operate in the Republic of Serbia were also terminated, namely: DELHAIZE SERBIA d.o.o. Beograd; DIS d.o.o. Krnjevo - Velika Plana; MERCATOR-S d.o.o. Novi Sad; UNIVEREXPORT d.o.o. Novi Sad; C- MARKET AD Beograd and GOMEX d.o.o.

Zrenjanin. The Commissioner undertook measures within his sphere of competence in 2017, and warned the Data Controllers about the irregularities in processing personal data.

Extraordinary inspections were continually conducted during the reporting period on the basis of intelligence and information obtained by the Commissioner. These cases include the inspections in the Ministry of Interior regarding processing personal data of citizens who are treated based on the health code “F”, in the Ministry of Education, Science, and Technological Development of the Republic of Serbia regarding the publication of personal data of pupils and students, in the Ministry of Defence and Ministry of Interior regarding the publication of personal data of MPs, in the Ministry of Interior and Ministry of Justice regarding the Protocol on electronic exchange of data, in the Ministry of Interior and Ministry of Public Administration and Local Self-Government regarding the Agreements on business-technical cooperation, in the Ministry of Interior regarding the mistaken to undertake technical, staff and organisational measures to protect personal data, in the National Assembly of the Republic of Serbia regarding the removal of employees’ files. The inspections were performed also regarding the personal data processing by the road transporter, use of automatic connection system and communication for direct advertisement, collection of data on participation in car accidents for the mediation in the process of damages collection, in the National Employment Service regarding the unauthorised provision of data to a lawyer, regarding the provision of data of non-vaccinated minors and their parents due to the initiation of misdemeanour proceedings, regarding the removal of the medical data of three people outside the community health centre, and regarding the data exchange on criminal convictions between two schools.

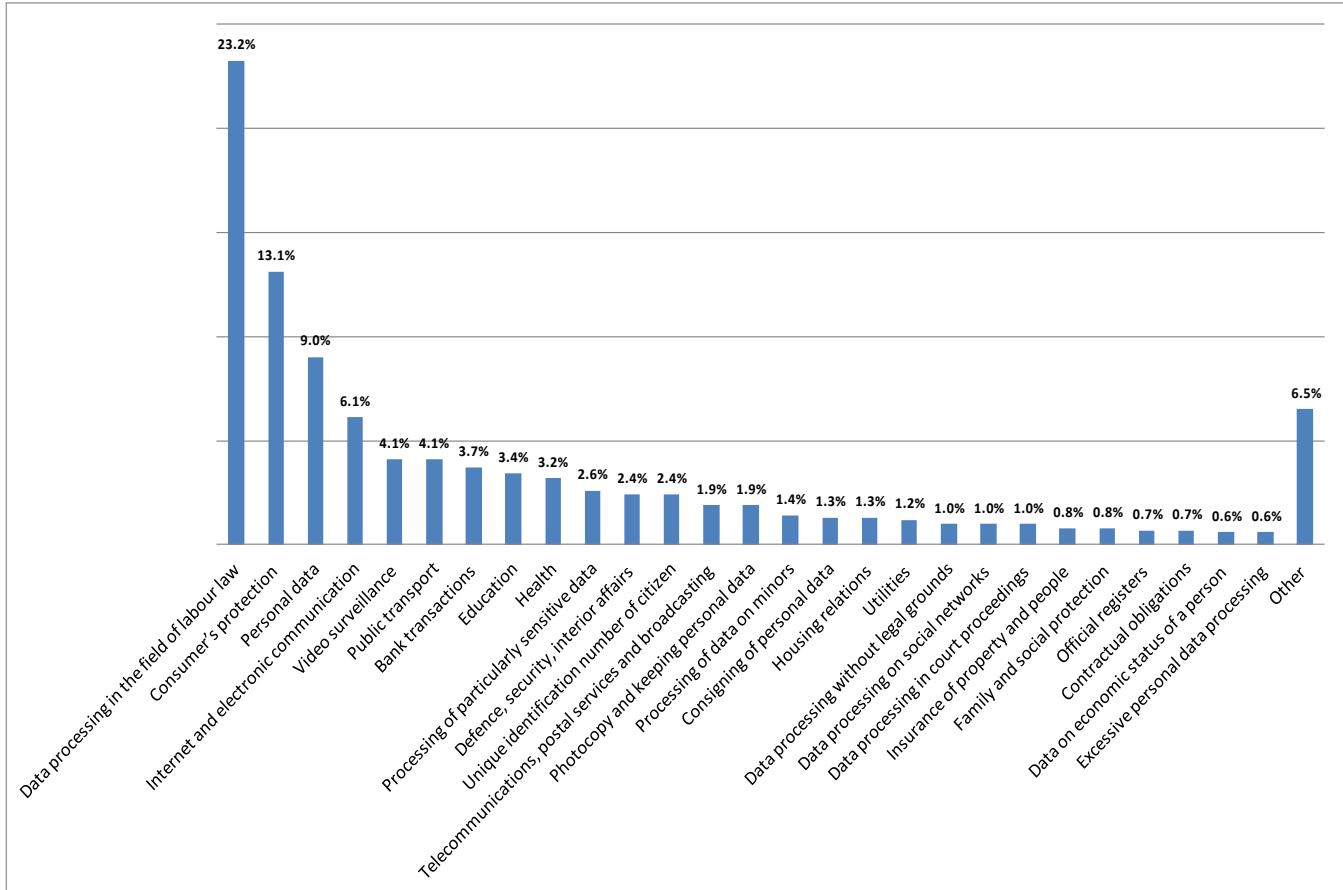
Data controllers inspected by the Commissioner in the 936 inspections were as follows: companies - 511 (54.9%), banks - 68 (7.3%), local self-government bodies - 64 (6.8%), state administration – 63 (6.7%), public enterprises - 48 (5.1%), institutions in the field of health – 35 (3.7%), NGO and other citizens’ associations - 30 (3.2%) etc.

Graph 16: Structure of controllers over which the inspection procedures were conducted in 2017



The most frequent reasons for inspection were: processing of data in the field of labour law (23.2%), personal data (9%), consumer protection (13.1%), the Internet and electronic communications (6.1%), public transport (4.1%), video surveillance (4.1%), banking operations (3.7%), education (3.4%), health (3.2%), processing of particularly sensitive data (2.6%), unique personal identification number (2.4%), defence, security, internal affairs (2.4%), telecommunications, postal services and radio broadcasting (1.9%), personal documents (copies, keeping, etc.) (1.9%), etc.

Graph 17: Reasons for initiating inspection control procedures



Irregularities identified by the Commissioner during the course of inspections have been mostly the same as in the previous period, such as: data processing without legal basis, i.e. without legal authorisation or a person's consent; data being processed is not necessary and/or appropriate for achieving the purpose of processing and data being processed are not proportionate to the purpose of processing.

By the end of the reporting period, out of the 332 warnings issued by the Commissioner under Article 50 of the LPDP, 289 warnings were complied with, in 11s case there was partial compliance, i.e. the percentage of compliance was 90.4%, and 26 warnings has not been complied with (7.8%), while the remaining 6 are pending

Of 103 warnings issued under Article 56 of the LPDP, 84 were complied with, in 8 cases the warnings were partially complied with, i.e. the percentage of compliance was 89.3%, while 10 warnings have not been complied with (9.7%), while the remaining 1 warning is pending.

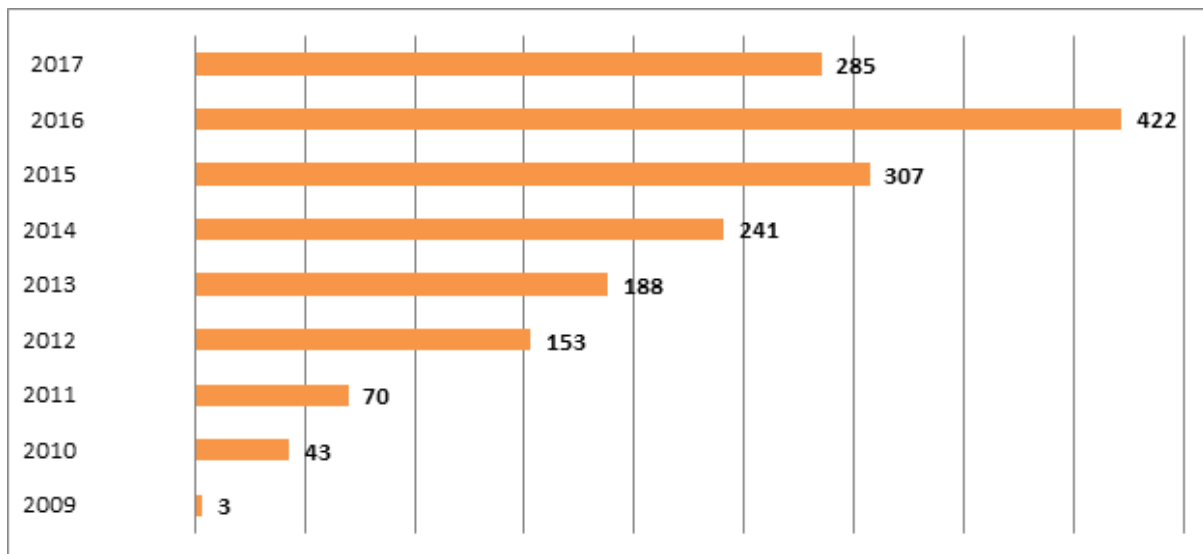
During the reporting period, the Commissioner passed 5 decisions, including: 2 decisions ordering deletion or making anonymous of collected data, 1 decision ordering deletion of collected data and rectification of irregularities within the specified time limit and temporary ban of data processing, and 2 decisions ordering rectification of irregularities within the specified time limit. Under these decisions, the Commissioner ordered 7 measures, as follows: in 3 cases he ordered rectification of irregularities within the specified time limit, in 1 case he ordered temporary ban on processing performed contrary to the provisions of LPDP and in 3 he ordered deletion of data collected without a proper legal basis. The controllers fully complied with 4 Commissioner's decisions and partially with 1 decision.

One of the most drastic examples of violations of the right to personal data protection of citizens in the Republic of Serbia, stated in the last year's Report reached its epilogue in a court of law. In 2017, the Misdemeanour Court in Belgrade provided the Commissioner with two decision on the termination of misdemeanour proceedings against the Privatisation Agency and responsible persons. The reason of the termination was that the Privatisation Agency had been dissolved on 1 February 2016, in accordance with the Law amending the Privatisation Law, and that against one responsible person the statute of limitations of infringement liability expired. In connection with the criminal report filed in the same case, in 2016 the Commissioner twice asked the Higher Public Prosecutor's Office in Belgrade for information about the outcome of it, which in 2017 provided the Commissioner with the information that, upon collecting the necessary notifications, it was not possible to identify the identity of the perpetration of the criminal offense, so the case was registered until the statute of limitation expires or until the perpetrator is identified.

3.3.2. Commissioner's acting on Complaints

In the course of 2017, the Commissioner received 285 complaints.

Graph18: Complaints received by the Commissioner per years



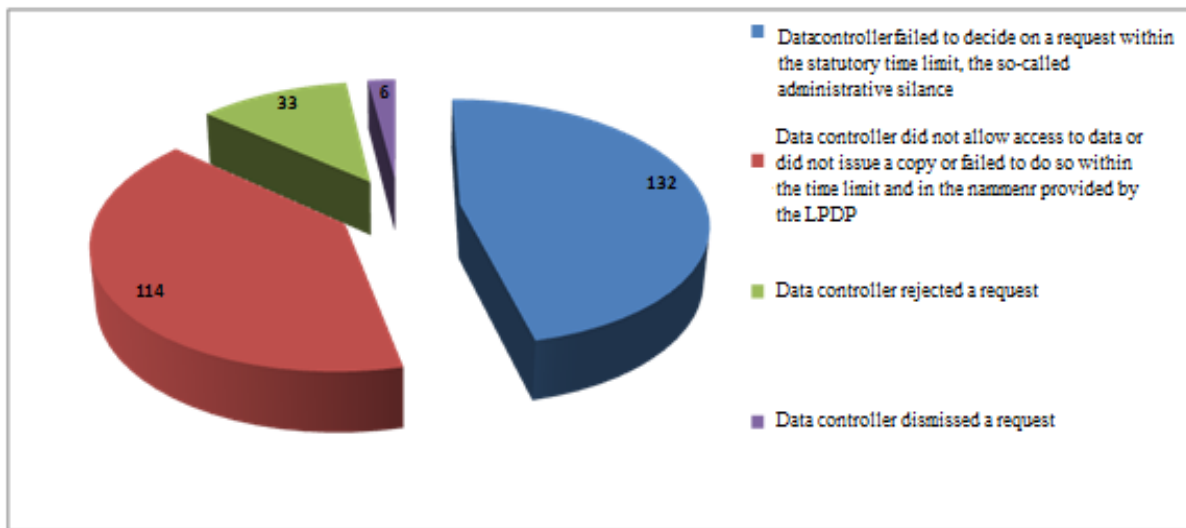
In 2017, the Commissioner handled 399 complaints, of which 285 were received in 2017, while the remaining 114 were carried forward from 2016.

The most frequent cause for lodging of complaints with the Commissioner was the fact that data controllers did not allow access to the data or did not issue copies of the data or failed to do so within the time limit and in the manner provided for by the LPDP (132). Compared with 2016, when this reason accounted for 51.2% of all complaints, in 2017 this reason accounted for 46.3%, which is indicative of an equal continuation of the negative trend. When it comes to controllers' actions.

The next most frequent cause for lodging of complaints with the Commissioner was failure of data controllers to decide on requests within the statutory time limit, the so-called administrative silence (114). Compared with 2016, when 44.8% of all complaints received by the Commissioner were lodged for this reason, in 2017, 40% complaints were lodged for this reason, which is still indicative of non-allowed acting by data controllers.

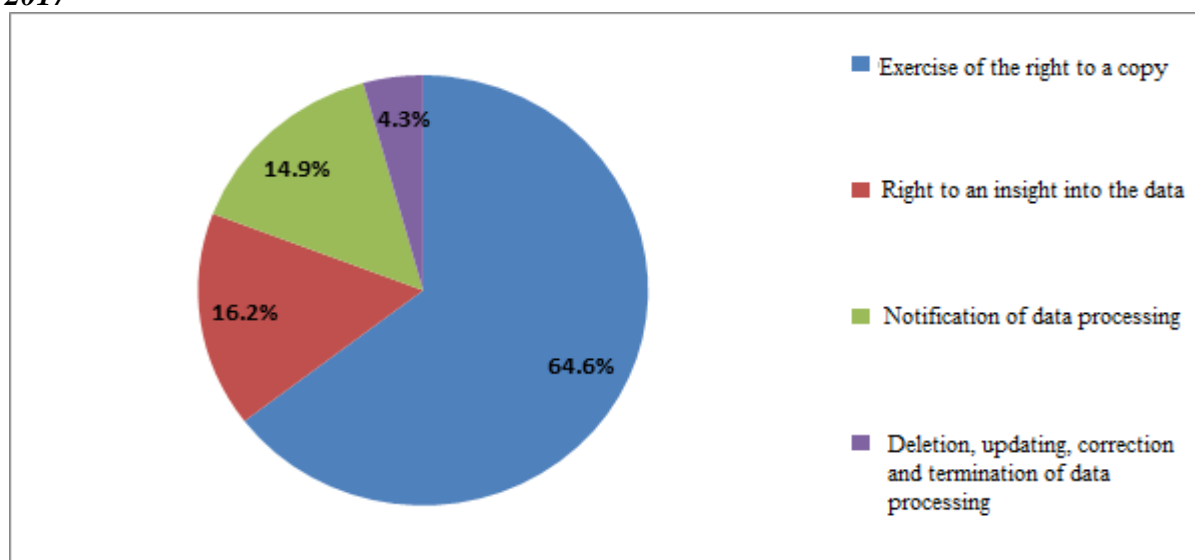
In 2017, the Commissioner received 39 complaints (13.7% of the total number of complaints received) against rejections (33) or dismissals (6) of requests by data controllers. These two reasons for complaints with the Commissioner are present as in 2016, when the Commissioner received 12.3% complaints compared with the total number of received complaints.

Graph 19: Reasons for lodging of complaints with the Commissioner in 2017

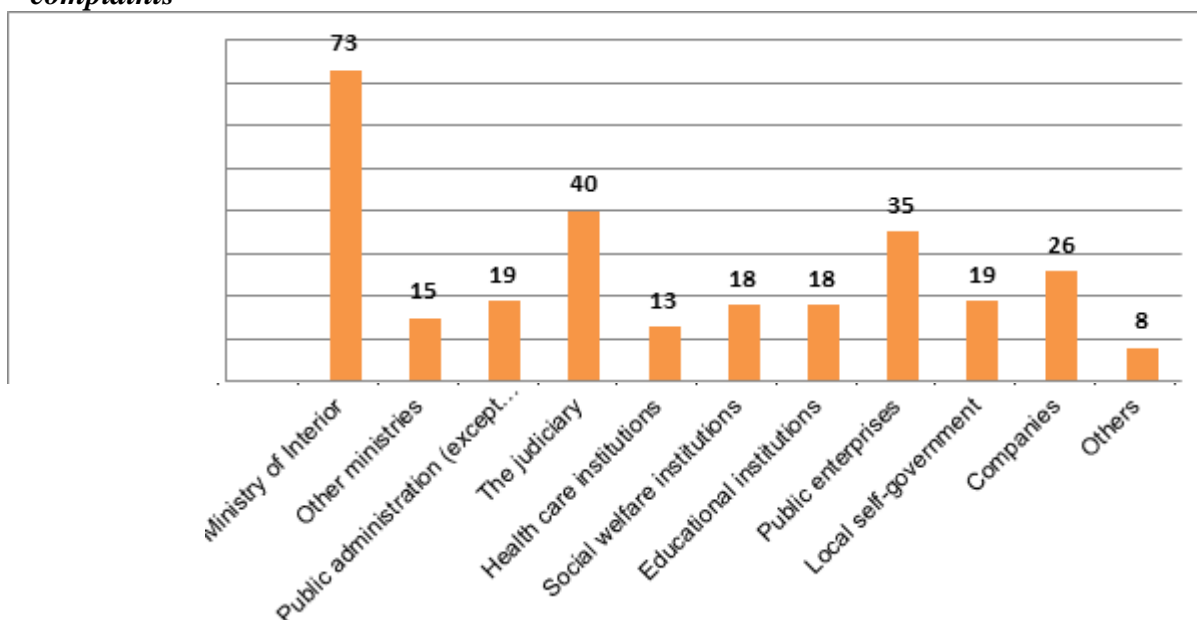


Complaints lodged with the Commissioner related to data contained in: police records, human resource records, records kept by banks, records kept by educational institutions, records in the fields of pension and disability insurance and health insurance, court case files, case files of social welfare centres, registers of births, marriages and deaths, medical documentation, phone listings etc.

The requests which resulted in the lodging of complaints with the Commissioner due to inadequate actions of data controllers included the exercise of: the right to a copy (64.6%); the right of access (16.2%); the right to notification of data processing (14.9%) and deletion, updating, correction, stay and termination of data processing (4.3%). The majority of complaints received by the Commissioner included the right to a copy (64.6%), which shows that this is the most frequent request submitted to data controllers, while the lowest number of complaints included deletion, updating, correction and termination of data processing, which is indicative of low citizens' interest in correction of their data processed by data controllers.

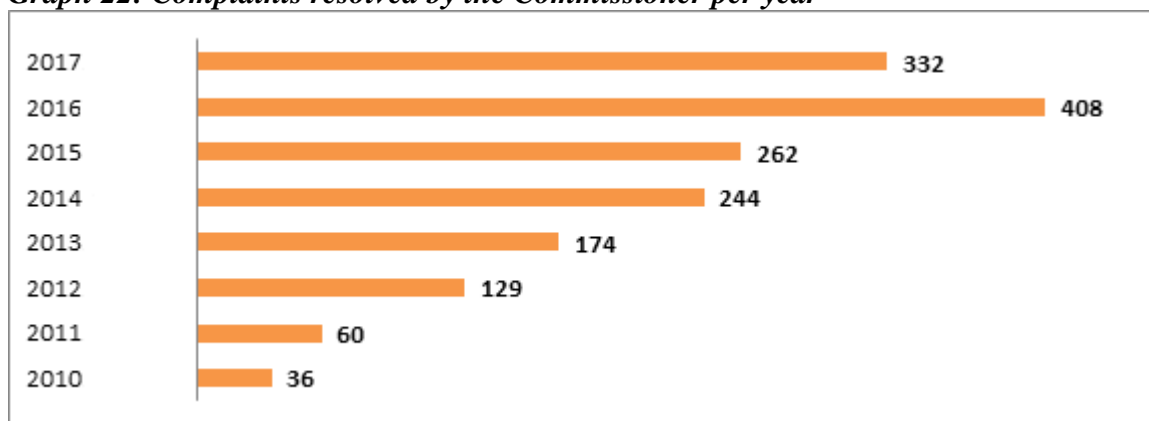
Graph 20: Requests which resulted in lodging of complaints with the Commissioner in 2017

The largest number of complaints, 251, were lodged due to (in)adequate actions of the public authorities, i.e. bodies and organisations given public authorisations and public enterprises. The largest number (107) were lodged due to the (failure of) actions of public administration bodies as data controllers. Due to the (failure of) compliance of ministries there were 88 complaints, of which 73 complaints against the Ministry of Interior (MoI), and due to the (lack of) compliance of other ministries, there were together 15 complaints.

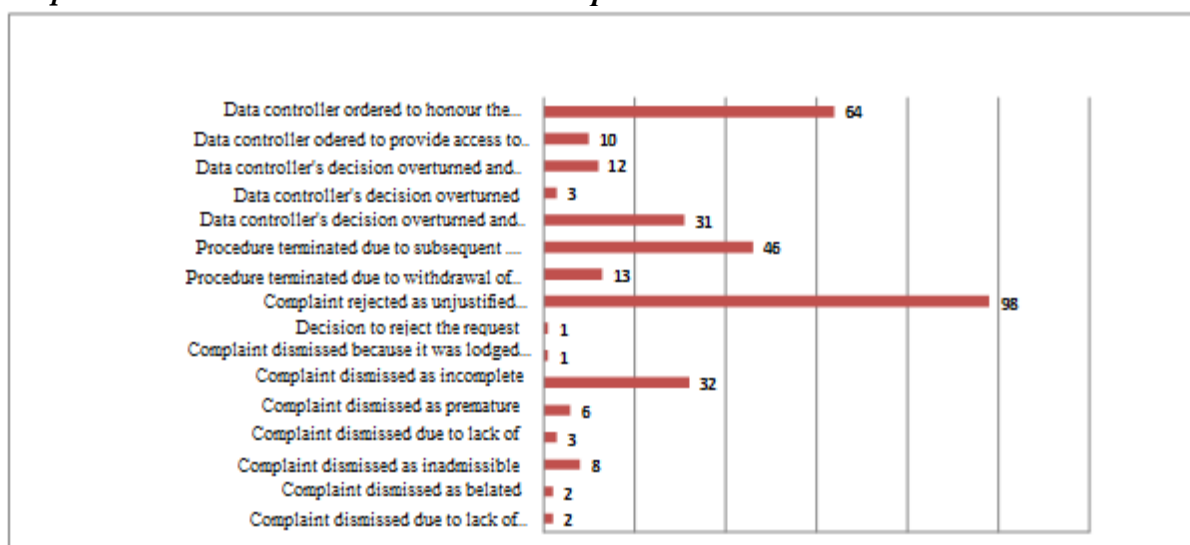
Graph 21: Data controllers whose actions (or failure to act) were causes for lodging of complaints

Complaints lodged against the MoI (73) make 25.6% of all complaints (285) lodged with the Commissioner, due to numerous records kept by the MoI.

In 2017, the Commissioner acted upon 399 complaints (285 received in 2017, and 114 complaints carried from 2016). Of those complaints, the Commissioner terminated proceedings on 332 complaints in 2017 (2018 from 2017 and all 114 from 2016), and 67 complaints were carried forward to 2018.

Graph 22: Complaints resolved by the Commissioner per year

In decisions passed pursuant to the received complaints, the Commissioner found that complaints were justified in 120 cases, or 36.1%; of that number, in 86 cases the Commissioner passed decisions with orders for data controllers (order to data controller to comply with the request (64), order to provide access to the requester (10), overturned data controllers' decisions with the order to comply with the request (12). The Commissioner overturned data controllers' decisions (3), overturned data controllers' decisions and returned the case to the data controller for renewed procedure (31). In 59 cases, or 17.8%, the Commissioner terminated the procedures by passing a conclusion, since the data controller, before the Commissioner passed the decision upon the complaint, complied with the request or the requester withdrew the complaint. The remaining complaints, i.e. 46.1% of the total number of resolved complaints, the Commissioner resolved by rejecting 99 cases, i.e. 29.8% of complaints as unjustified (98) or by rejecting the request as unjustified (1), and in 54 cases, i.e. 16.3%, the Commissioner rejected the complaint due to formal grounds (due to lack of competence, due to the lack of admission, incomplete complaint, premature complaint, untimely complaint, filed by unauthorised person, or inadmissible complaint).

Graph 23: Commissioner's decisions on complaints in 2017

During the reporting period, the Commissioner issued a total of 86 binding and final decisions pursuant to the lodged complaints ordering data controllers to honour the requests or to provide access to data to requesters and ordering data controllers to inform him about compliance with decisions. 80 data controllers fully complied with the Commissioner's decisions, 1 data controller partially complied with the decisions and notified the Commissioner accordingly (94.2%), while 3 data controllers failed to comply with the Commissioner's decision, while the compliance of 2 data controllers is ongoing.

3.3.3. Keeping the Central Register

According to the Commissioner's rough estimate, there are about 350,000 personal data controllers in Serbia, including public authorities, territorial autonomies and local self-government units and other authorities or organisations with delegated public powers, legal entities and individuals who process personal data.

As at 31 December 2017, a total of 2,343 personal data controllers submitted records of 11,042 personal data files they keep to the Commissioner's Central Register.

This practically means that, nine years after the LPDP entered into force, of assumed 350,000, only 1,951 data controllers, or 0.7% of the total number of data controllers, have complied with the statutory duties regarding registration with the Commissioner's Central Register.

There is absolutely no justification for ignoring and disrespect of this statutory obligation en masse.

In addition, there has been a negative overall trend of fewer and fewer data controllers submitting fewer and fewer records of their data files with the Central Register, with minor annual fluctuations.

In 2017, 392 data controllers submitted to the Commissioner records of 1,338 data files they maintained.

In 2017, the data collectors which submitted the largest number of records of data files to the Commissioner are companies (287) – 895 records of personal data files, which was about 3.1 records of data files per one company. They are followed by natural persons (sole traders), with 55 natural persons submitting 91 records of personal data files, which was about 1.7 records per one natural person etc. The fact that companies are the majority of data controllers registered with the Central Register is understandable, not least because they are the most numerous data controllers. Also, this category includes a large number of data controllers whose international and foreign parent companies require compliance with this duty, with which they are very familiar in the countries of their establishment. Finally, the multi-annual trend of companies being the most numerous data controllers registered with the Central Register is also evident from the fact that since the establishment of the Central Register (14 May 2010) until 31 December 2017, out of the 2,343 personal data controllers that submitted records of data files to the Commissioner, 1,176 are companies, while 1,167 are all other data controllers together (public authorities - 303, institutions - 257, territorial autonomies and local self-government units - 199, associations - 128, natural persons - 156, bodies vested with public powers - 38 and others - 86).

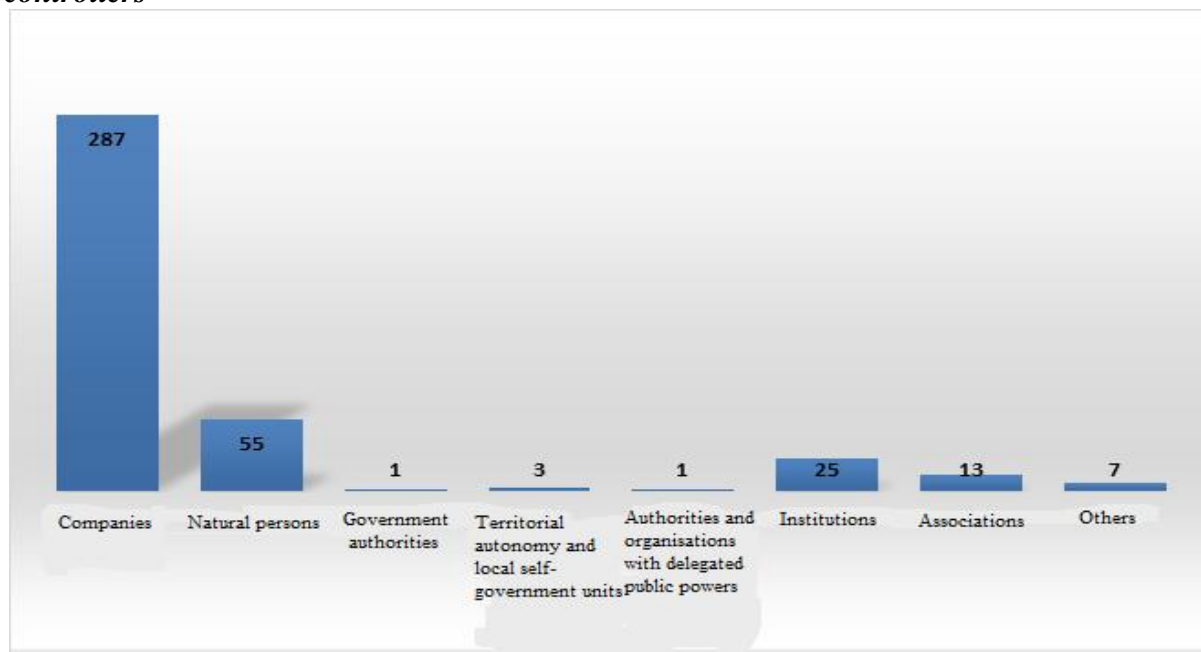
In 2017, there was a large increase in the number of registered records by companies and entrepreneurs.

In the same period the Commissioner also received 149 requests for changes in the existing records in the Central register (8 requests from 2016, and 141 requests filed in 2017),

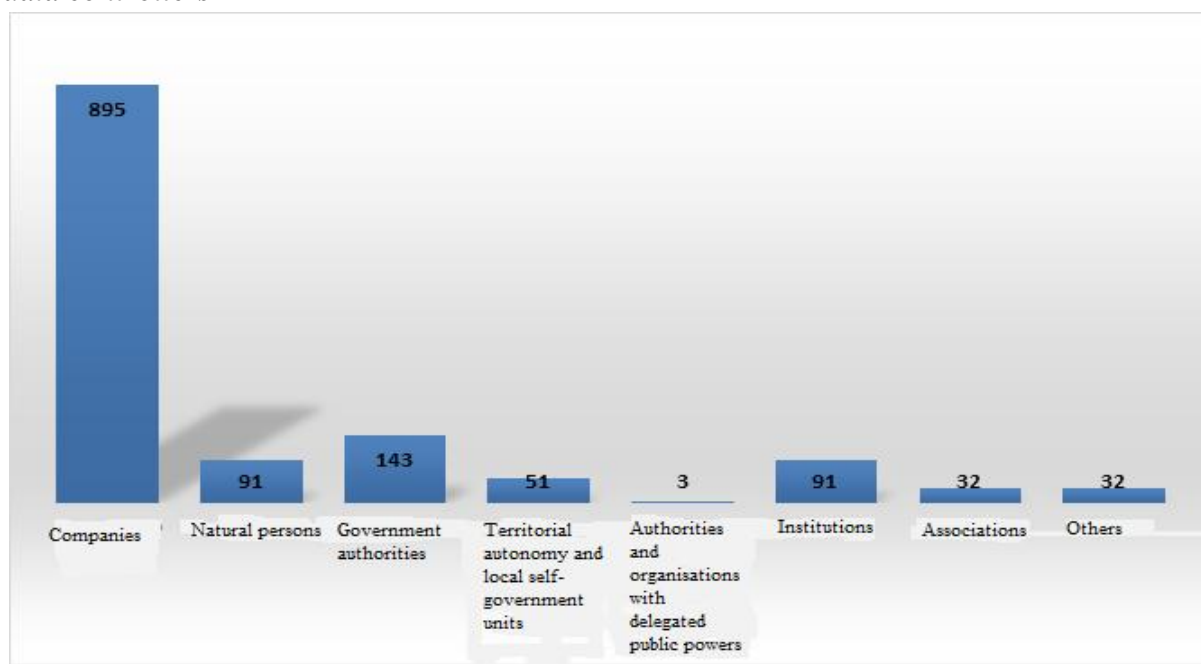
of which 146 received a positive reply, and 3 were identified to have failed to submit the records

The Commissioner continues to make efforts and calls for compliance with this duty under the LPDP, in particular through warnings sent to data controllers, through presentation of legislative provisions, through training of the staff of large data controllers and through statements in his annual reports

Graph 24: Data controllers registered with the Central Register in 2017, by types of data controllers



Graph 25: Records of data files registered with the Central Register in 2017, by types of data controllers



3.4. Acting of Other Public Authorities in connection with Acts by the Commissioner in the Field of Personal Data Protection

3.4.1. Acting of Prosecutor's Office on Criminal Reports filed by the Commissioner

In 2017, the Commissioner filed 3 criminal reports including 2 criminal reports for the criminal offense referred to in Article 146 of the CC (unauthorised collection of personal data) and 1 criminal report for the criminal offense referred to in Article 299 of the CC (computer sabotage). In the previous work, starting of 2010 until the end of the reporting period, the Commissioner has filed 33 criminal reports for criminal offenses referred to in Article 143 (unauthorised wiretapping and recording), 144 (unauthorised photographing), 146, 299, 302, (unauthorised access to protected computer, computer network or electronic data processing), 329 (impersonation), 355 (forging a document) and 359 (abuse of office) of the CC.

According to the data available to the Commissioner, based on criminal reports filed by the Commissioner so far, one final convincing judgement has been passed, 16 criminal reports have been dismissed due to the expiry of the statute of limitations for prosecution or due to the application of opportunity principle and once investigation was terminated. Proceedings on other criminal reports have not been terminated yet. In 2017, as the Commissioner found out, nothing new was done by the competent prosecutor's offices regarding the criminal reports filed by the Commissioner in the previous years.

The Commissioner believes that in those criminal reports he filed with public prosecutor's offices he had provided enough evidence for their further process, so that the perpetrators of those criminal acts could be identified and duly sanctioned.

3.4.2. Acting of Misdemeanour Courts on Petitions filed by the Commissioner

In 2017, the Commissioner filed 19 requests for the initiation of misdemeanour proceedings for the violation of provisions of the LPDP.

Regarding all misdemeanour requests filed so far, the Commissioner received 18 decision of the misdemeanour courts in 2017 (15 first-instance and 3 second-instance decisions), as follows: 8 convicting judgements in the first-instance and 9 decisions on terminating the proceeding due to the expiry of the statute of limitations, and one decision on dismissing the request for the initiation of the misdemeanour proceedings due to the expiry of the statute of limitations.

Of all received first-instance judgements in 2017, none was exonerating.

Among the most often reasons for the initiation of misdemeanour proceedings are data processing contrary to the conditions defined in Article 13 of the Law on Personal Data Protection, which refer to the processing by the public authorities, then due to illegal processing of sensitive personal data, inadequate implementation of data protection measures, and the absence of compliance with the Commissioner's acts.

Misdemeanour courts issued fines in the convincing judgements in the total amount of 221.000 dinars and 4 warnings. The fines imposed to data controllers are in the amount from

50,000 to 80,000 dinars, while those imposed to responsible persons in the data controllers amounted to 5.000 to 10.000 dinars.

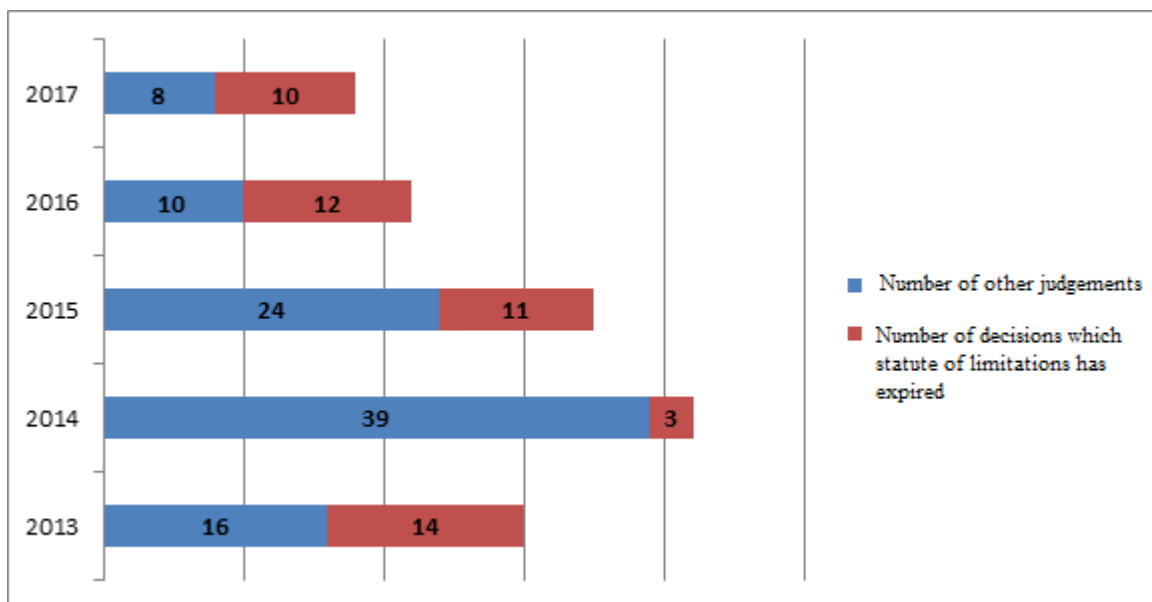
Misdemeanour proceedings were terminated, i.e. the requests for the initiation of misdemeanour proceedings were dismissed in 10 cases, due to the expiry of the absolute statute of limitations. The Commissioner has indicated for several times so far, including the procedure of drafting and adoption of the current Misdemeanour Act, but unsuccessfully that the deadline of two years for the expiry of the absolute statute of limitations is too short, and that there is a risk that a large number of cases will end up with the expiry of the statute of limitations.

In the past five years there has been an increase in the share of cases in which the expiration of the absolute statute of limitations occurred, compared to the judgement on the merits, for example, from one third of cases in 2015 to one half of all cases in the past two years.

What is also concerning is the fact that the cases terminated due to the expiration of the statute of limitations had a big interest of the public to identify the liability such as the publication of data on 5.190.397 people who exercised the right to free chares, which compromised the personal identification number of the majority of adult citizens of the Republic of Serbia (proceeding against the Privatisation Agency and responsible persons).

Furthermore, in cases where the serious violation of the right of the persons was obvious, i.e. provision of particularly sensitive personal data without any legal grounds for that (data from the medical documentation which refer to mental health), the misdemeanour courts issue unusually mild sanctions to the Ministry of Health, Clinic for Psychiatric Diseases, i.e. the court issued only a warning to the responsible person. In connection with the same case, the same data were provided by the Ministry of Health to the Ministry of Interior without any legal grounds, and the proceeding was terminated due to the expiration of the absolute statute of limitations.

Graph 26: Decisions of Misdemeanour Courts provided to the Commissioner during 2013-2017



3.4.3. Acting of Administrative Court on Legal Actions against the Commissioner's Decisions

In the course of 2017, the Administrative Court received 14 legal actions against the Commissioner's decisions. Most of the legal actions (9) were filed against decisions rejecting the complaint as unjustified, 1 legal action was filed by data controller who was given the order to comply with the request, 2 legal actions were filed against resolutions to terminate acting on complaints, and 2 were filed against resolutions dismissing the complaints.

In the course of 2016, the Administrative Court ruled on 16 legal actions (two from the previous year), by rejecting 15 and accepting 1

On this occasion the Commissioner will not particularly point out the judgements by which the Administrative Court rejected the legal actions against the Commissioner, but the judgement issued by this court accepting the legal actions, and returning the case for a repeated proceeding.

Commissioner issued a decision rejecting as unjustified complaint of the requester, i.e. prosecutor, filed against the acts of PUC "Inforstan tehnologije" Belgrade with the explanation that this specific case does not refer to personal data and the exercise of the rights in connection with the personal data processing.

Against this decision of the Commissioner, legal action was filed with the Administrative Court, stating that a decision had not been made on the request made by the requester in the form defined by the law, but had been sent a notification in writing with the elements of the decision from which it could not be identified with certainty if the request had been rejected or dismissed.

Acting on this administrative proceeding, the Administrative Court issued a judgement that the legal action is accepted, annulled the decision and return the case for a repeated proceeding of the Commissioner. It can be concluded from the explained judgement that the reason of such a decision is formal in nature. The PUC "Informstan tehnologije", as a data controller, was obliged to issue a resolution on the submitted request, which is an obligation arising from the provisions of Article 25, paragraph 7 of the LPDP, which define that if a data controller rejects the request, he shall pass a resolution thereon, and the notices shall be issued only when the request is accepted, which arises from paragraphs 1, 2 and 3 of the same Article, and not when it is rejected. As in this case, from the act of the data controller is not clear which decision on the request was made, nor was the requester informed about all the information he had required, which indicates that it is the rejected decision, in that case the resolution had to be passed by the data controller with the relevant explanation.

In the repeated proceeding, the Commissioner issued a decision ordering the data controller to comply (act in line) with the request within the defined period of time, in the part of the request on which decision was not made.

3.5. Commissioner's Initiatives and Opinions relating to Regulations

3.5.1. Opinions on Draft Laws and Bills and By-laws

In the course of 2017, the Commissioner issued 79 opinions on draft laws and bills and other by-laws and regulations. Of that number, 60 opinions were issued on draft laws and bills, while two opinions were given on his own initiative, and 58 on the request of competent bodies and authorities. To some draft laws, the opinions were given twice, at the request of the authorised proponent.

19 opinions were given to drafts and proposals of by-laws and other regulations.

Opinions on draft laws to:

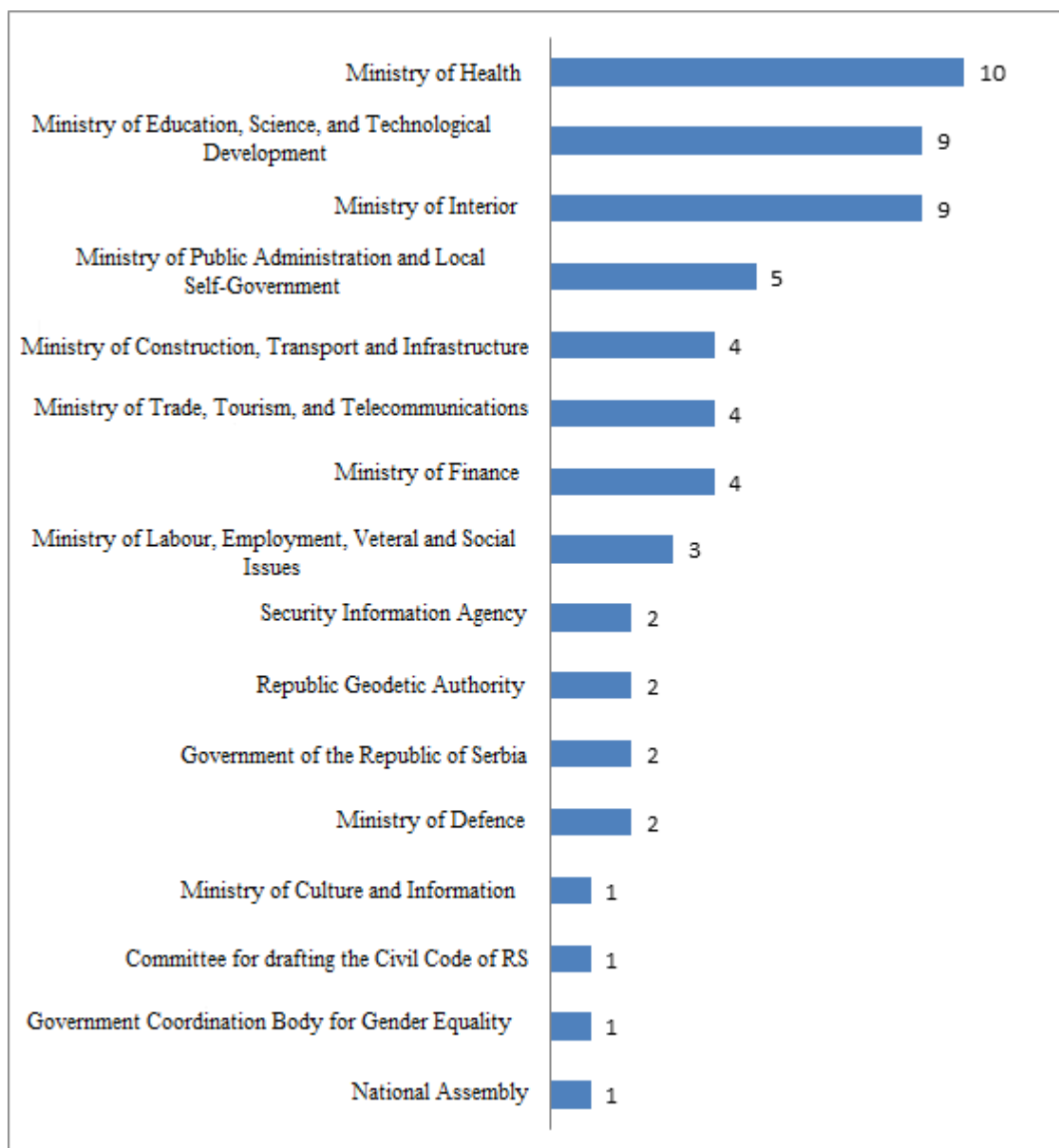
- Ministry of Interior, an opinion was given on the Draft Law on Border Control,
- Ministry of Interior, an opinion was given on the Draft Law on the Police,
- Ministry of Interior, an opinion was given on the Draft law on Foreigners,
- Ministry of Interior, an opinion was given on the Draft Law on Records and Data Processing in the Field of Internal Affairs,
- Ministry of Interior, an opinion was given on the Draft Law on the Amendments to the Law on the Citizenship of the Republic of Serbia,
- Ministry of Interior, an opinion was given on the Draft Law on the National DNA Registry,
- Ministry of Interior, an opinion was given on the Draft Law on the Unique Identification Number of Citizen,
- Ministry of Interior, an opinion was given on the Draft Law on Asylum and Temporary Protection,
- Ministry of Interior, an opinion was given on the Draft Law on Amendments to the Law on Road Traffic Safety,
- Ministry of Defence, an opinion was given on the Draft Law on Amendments to the Law on Defence
- Ministry of Defence, an opinion was given on the Draft Law on Amendments to the Law on Serbian Armed Forces,
- Ministry of Finance, an opinion was given on the Draft Law on the Budget of the Republic of Serbia for 2018,
- Ministry of Finance, an opinion was given on the Draft Law on Amendments to the Law on the Budget System,
- Ministry of Finance, an opinion was given on the Draft Law on Amendments to the Law on Republic Administrative Fees, twice (one opinion given on his own initiative),

- Ministry of Public Administration and Local Self-Government, an opinion was given on the working version of the Law on Amendments to the Law on Free Access to Information of Public Importance,
- Ministry of Public Administration and Local Self-Government, an opinion was given on the Draft Law on Amendments to the Law on Salary System of Employees in the Public Sector, twice,
- Ministry of Public Administration and Local Self-Government, an opinion was given on the Draft Law on Electronic Government,
- Ministry of Public Administration and Local Self-Government, an opinion was given on the Draft Law on Public Service Employees,
- Ministry of Contraction, Transport and Infrastructure, an opinion was given on the Draft Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, twice
- Ministry of Contraction, Transport and Infrastructure, an opinion was given on the Draft Law on Registration with the Cadastre,
- Ministry of Contraction, Transport and Infrastructure, an opinion was given on the Draft Law on Roads,
- Ministry of Trade, Tourism, and Telecommunications, and opinion was given on the Draft Law on Electronic Communication, twice,
- Ministry of Trade, Tourism, and Telecommunications, and opinion was given on the Draft Law on Postal Services, twice,
- Ministry of Labour, Employment, Veteran and Social Issues, an opinion was given on the Draft Law on Financial Support to Families with Children,
- Ministry of Labour, Employment, Veteran and Social Issues, an opinion was given on the Draft Law on Gender Equality,
- Ministry of Labour, Employment, Veteran and Social Issues, an opinion was given on the Draft Law on War Memorials,
- Ministry of Health, an opinion was given on the Draft Law on the Application of Human Cells and Tissues, twice,
- Ministry of Health, an opinion was given on the Draft Law on Transplantation of Human Organs,
- Ministry of Health, an opinion was given on the Draft Law on Transplantation of Human Organs for the Purpose of Treatment,
- Ministry of Health, an opinion was given on the Draft Law on Heath Care,
- Ministry of Health, an opinion was given on the Draft Law on Health Insurance,

- Ministry of Health, an opinion was given on the Draft Law on Amendments to the Law on Medical Documentation and Records in Health, twice,
- Ministry of Health, an opinion was given on the Draft Law on Pharmaceutical Activity,
- Ministry of Health, an opinion was given on the Draft Law on Medical Devices,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Amendments to the Law on the Primary and Secondary Education and Upbringing,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Amendments to the Law on Secondary Education and Upbringing,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Amendments to the Law on Pre-school Education and Upbringing,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Amendments to the Law on Seals,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on the Fundamentals of the Education System,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Dual Education,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Educational Inspection,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Professions of Special Interest for the Republic of Serbia and Conditions for their Performance,
- Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Higher Education,
- Ministry of Culture and Information, an opinion was given on the Draft Law on Archive Material and Archive Activity,
- Government of the Republic of Serbia, an opinion was given on the Draft Law on Gender Equality, twice,
- Coordination Body for Gender Equality, an opinion was given on the Draft Law on Gender Equality,
- National Assembly of RS, an opinion was given on the defined Bill on National DNA Registry (on his own initiative),

- Security Information Agency, an opinion was given on the Draft Law on Amendments to the Law on the Security Information Agency, twice,
- Republic Geodetic Authority, an opinion was given on the Draft Law on Amendments to the Law on State Surveying and Cadastre,
- Republic Geodetic Authority, an opinion was given on the Draft Law on National Infrastructure of Geospatial Data,
- Committee for creation of Civil Code of RS, an opinion was given on the proposal of amendments to the Pre-draft of the Civil Code from the aspect of the LPDP,

Graph 27: Bodies and authorities given the opinions on the bills and draft laws



3.5.2. Content of Commissioner's Opinions

Looking at the opinions given on the draft laws, bills and other documents, it can be concluded that most of the Commissioner's comments on those texts, as was the case in the previous years, refer to the following:

One of the basic issues is still the resistance to the fact that data processing can be regulated only by the law. The texts of draft laws still define that the personal data processing is defined by by-laws, though the provisions of Article 42 of Serbian Constitution explicitly define that personal data collecting, keeping, processing and using shall be regulated by the law, and that the decision of the Constitutional Court of Serbia from the session held on 30 May 2012, published in the "Official Gazette of RS", no 68/12 since 18 July 2012, confirms that by-laws cannot be an appropriate legal ground for personal data processing.

The purpose of data processing defined by the law is often insufficiently clear and defined, and in some cases it is not even allowed. The entities preparing the texts of the laws in the majority of cases fail to define the purpose of data processing.

When itemizing the type of personal data to be processed, insufficient care is paid to the principle of proportion as one of the basic principles of personal data processing.

Entities preparing the texts of laws almost always forget to define the time periods of keeping the processed data.

In the texts of the laws regulating personal data processing almost no attention is paid to the definition of liability for the failure to undertake organisational and technical measures for personal data protection.

Authorised law petitioners, when drafting the texts of the laws regulating personal data processing, either regulating new mass processing, or introduction of new information technologies, do not perform an assessment of the impact such processing has on privacy.

In the texts of draft laws and bills, there were attempts to define absolute limits of the right to free access to information of public importance, which is contrary to Article 8 of the Law on Free Access to Information of Public Importance. There is no absolute exemption from the right to access to information. Limitations of the right to free access to information of public importance, in line with Article 8 of the Law on Free Access to Information, may be defined only and exclusively by the law regulating the free access to information of public importance, and under the conditions that it is necessary in a democratic society for the protection of a serious violation of the predominant interest based on the Constitution or the law.

3.5.3. Overview of Commissioner's Opinions on Laws Adopted in 2017

In the sessions of the National Assembly in 2017, 89 laws were adopted, including 18 laws for which drafts the Commissioner provided opinion in 2015, 2016 and 2017. The Commissioner provided all those opinions based on the requests of law petitioners, and based on his power defined by Article 35 of the Law on Free Access to Information of Public Importance and Article 44, paragraph 1 of the Law on Personal Data Protection. Only for one text of the law, of 18 adopted, the Commissioner did not have any remarks when giving the opinion on the draft. Of the remaining 17 adopted laws, the Commissioner's suggestions

were fully accepted only in one case, and to a large extent they were accepted in three other laws. Commissioner's remarks were partially accepted in five laws. In almost a half of commented drafts (eight) Commissioner's suggestions were not accepted in the largest part or at all.

The most significant issue is still definitely the rejection of the authorised law petitioners to comply with provisions of Article 42 of Serbian Constitution, which define that personal data must be regulated by the law. Numerous provisions of adopted laws left them to be regulated by by-laws, which personal data processing will be subsequently defined by the line minister.

3.5.4. Typical and Illustrative Commissioner's Opinions on Laws

A) One of the most significant opinions given by the Commissioner in 2017 is the opinion on **Draft Law on the National DNA Registry**, since it is about regulating the matter, i.e. preparation of the law which might have an extreme impact on personal data protection and the right of people with regard to personal data processing. The data which might be obtained by the analysis of biological material, including DNA profiles, are the data which should be treated as particularly sensitive personal data, since they are unique and unchangeable, and in that manner the data on the health status and ethnical origin of a person can be obtained. The Commissioner pointed out that the purpose of establishing the DNA Registry must be clearly defined and thought through if the mass processing of data which is planned in the registry proportionate to the desired objective of such processing.

A special concern regarding the solutions planned by the Draft, the Commissioner expressed with regard to the fact that the data contained in the registry could be processed without any limits and deadlines, it would keep not only the data on persons suspected, accused or convicted for committing criminal offenses, but also the data on persons who suffered a damage due to the commitment of criminal offenses, including the data on minors i.e. children whose DNA profiles are processed in order to identify if the traces of biological material found on a victim correspond to the DNA profile of the person suspected or accused for committing criminal offenses. It is explicitly defined that the registry should contain, *inter alia*, DNA profiles established for the elimination, DNA profiles of all persons for whom forensic registration was performed regardless of the purpose and the reason for the processing. The Draft does not define the conditions under which the data in the registry are processed, including the definition of clear rules and conditions under which the registration and introduction of the data are done, and undisputable samples in the registry, nor are given conditions for the deletion from the registry and time periods for keeping the data.

The Draft defines that all DNA laboratories on the territory of the Republic of Serbia are obliged to provide the Ministry of Interior all DNA profiles and identification data obtained for the needs of criminal proceedings and available to them on the day of entry into force of this law, not later than within six months. Also, there are no differences between the DNA profiles of people who are only suspects for a criminal offense, and a proceeding was not initiated against them or they are liberated with the final judgement, on one side, and people who are convicted for committing a criminal offense, on the other side, and the time and severity of the committed criminal offense is not taken into account. The purpose of this unselective provision of the huge number of data is unclear, and it is also not clear how will it be ensured that the laboratories do not provide the data of the people having nothing to do

with committing of criminal offenses (for example, DNA profiles and test of people who have done the DNA analysis for the purpose of paternity determination or check of health conditions).

The Commissioner pointed out that such a text of the Draft is not at all in line with the Recommendation no (92)1 of the Council of Europe on genetic privacy, nor in line with the standards of the European Court for Human Rights.

The Commissioner has particularly pointed out that it is absolutely unacceptable and inadmissible that closer rules on keeping the national DNA registry are defined by Minister of Interior, as defined by the Draft, in the situations when regulating processing of such sensitive data as genetic data, which might disclose the countless number of data on a person, including the health conditions and ethnical origin.

B) The Commissioner has pointed out regarding the provided **Draft Law on Amendments to the Law on Medical Documentation and Records in Health** that the main problem of personal data processing is not being resolved in the Integrated Health Information System (IHIS), i.e. the issue of the legal grounds for establishing the IHIS is not resolved. The current Law on Medical Documentation and Records in Health does not have a provision giving power to data controllers to establish the IHIS in the manner in which it is operating in practice, and in which data processing is done within it. The Law does not envisage the establishment of a single unique and centralised collection of personal data which could be under control of one data controller. Two main remarks not accepted by the law maker are that the law should define the purpose of data processing within the IHIS, and the purpose for the creation of such a huge database.

C) When it comes to the provision of the **Draft Law on Fundamentals of the Education System**, the Commissioner has given his opinion and suggestions for several times regarding the previous texts of that draft, but the key thing remained unregulated. The lawmaker envisaged the unification of all records kept in the education system at all levels of education into a single information system of education (hereinafter: SISE), creating a huge, centralised database from defined records, without a clearly defines and allowed purpose. It is unclear what is the purpose of this robust data processing and the establishment of such a clumsy information system, which is contrary to one of the basic principles on personal data processing - principle of purposefulness. As the Draft defines a creation of a register on children, pupils and adults, i.e. all persons who have ever been involved in the education system in an educational institution. As Article 71 of the Constitution defines that primary education is mandatory, it actually means after only several years of implementation of this law, that register would gather almost all Serbian citizens, and also other people undergoing the education system. It cannot be allowed to centralise a large number of smaller databases and make one huge database only for the reasons of processing the data for statistical and analytical purposes, and the Commissioner has pointed out this to the Ministry more than once. Due to the given reasons, for unification of all these data and their further processing, a conclusion is made that the purpose of data processing is a further data processing, i.e. that data processing is a purpose itself, which is forbidden by the Constitution of the Republic of Serbia, and by the Law on Personal Data Protection, and ratified international documents in this field.

D) In the opinion on the **Draft Law on Amendments to the Law on Security Information Agency**, the Commissioner has pointed out that the issues regarding the

security clearance checks in the legal system of the Republic of Serbia are not regulated properly, in line with domestic and international standards in the field of personal data protection, nor with the solution in this Draft. The fact is that for the purpose of performing certain functions or activities, due to their nature, it is necessary to conduct security clearance checks, such as the case with people starting employment in the Security Information Agency, or are being returned to work in the Agency. However, it is necessary that the security clearance check procedure is clearly and unambiguously regulated by the law, in the manner which ensures the performance of the checks without violating the human rights and freedoms, in particular the right to privacy and personal data protection. It means that this issue is necessary to be regulated by the law, so that the procedure of security clearance checks is certain, known in advance and that it cannot be randomly altered or bring to processing of unnecessary data on third parties (for example, family members of the person undergoing the security inspection). It is necessary to have the security inspection performed by state authorities, regulated by the law.

Even when personal data processing is done for the public interest, it should not go into somebody's privacy in the degree higher than the one necessary to fulfil the purpose of data processing. In order to meet that requirements, it is necessary to have the law regulating the clear rules under which personal data processing is done.

E) In the opinion on **the Draft Law on Amendments to the Law on Police**, the Commissioner has pointed out the provision which would be the cause of not only the mismatch of the regulations, but also of a violation of the right to privacy. Ministry of Interior accepted the Commissioner's suggestion and this provision was not contained in the Bill on Amendments to the Law on Police defined by the Government.

Namely, the Draft defines the obligation of public administration bodies, bodies of territorial autonomies and local self-government units to process personal data contrary to the subject of the Law on Police identified in Article 1 of that law. At the same time, it defined that public administration bodies, bodies of territorial autonomies and local self-government units may establish technical systems in public places for detection of noise, disturbance of the public order and peace, registration of offenses, criminal offenses and other acts *intelligent video surveillance* systems, and other technical systems; that police officers may have the access to those systems and use them, as well as the systems of technical protection of legal entities, entrepreneurs, and natural persons, in line with the law, for the elimination and resolving criminal acts and offenses, and for the needs of initiating a disciplinary procedure against police officers and that technical conditions, manner of installation and use of technical systems for detection of noise, disturbance of the public order and peace, registration of offenses, criminal acts and other acts, intelligent video-surveillance system and other technical systems, are closely regulated by the by-laws passed by the Minister.

The Commissioner has pointed out the fact that public administration bodies, bodies of territorial autonomy, and bodies of local self-government units may process personal data only within the legally established powers, so the bodies which are not authorised by the law to detect the noise, disturbance of the public order and peace, registration of offenses, criminal acts and other acts, cannot perform personal data processing for any of the mentioned purposes. In the specific case, it is about the police measures and activities, indicated by the provision of Article 3 of the mentioned Article of the Draft Law, defining that by-laws, which closely regulate the technical conditions, manner of installation and use of the mentioned technical systems, are passed by the Minister of Interior, so the name of the

part of the law which contains this provision – IV Police Measures and Activities. According to the aforementioned, the Draft Law in question cannot establish the power for public administration bodies, bodies of territorial autonomy and bodies of local self-government units for performing the measures and activities within the power of the Police and Ministry of Interior.

Furthermore, the need for such comprehensive personal data processing i.e. establishment of the intelligent surveillance system, etc. must be subject to a special analysis and decisions. In that respect, before making a decision on establishing such a surveillance and processing, it is necessary to conduct an analysis of risks on the people's rights.

F) Regarding the **Draft Law on Amendments to the Law on Defence** the Ministry sent to the Commissioner, the Commissioner has repeated his opinion to the Ministry from late 2016, with regard to the former Draft Law on Amendments to the Law on Defence, indicated by the Commissioner in the 2016 Report.⁶⁷

Namely, the Draft defines a change of Article 102 of the Law on Defence, according to which that law would define the secret data considered important for the defence system, fully exclude the right of the public to the access to those data and data marked as data of interest for national safety of the Republic of Serbia, and give the power to the Government to, *inter alia*, closely regulate the data important for the defence system which must be kept and protected. In the opinion on the Draft Law on Amendments to the Law on Defence from 2016, the Commissioner pointed out that such a solution was completely unacceptable from the point of view of the unity of the legal order, i.e. capacity of the Law on Free Access to Information of Public Importance and the Law on Data Secrecy.

Since a year later the Ministry submitted almost identical provisions for the opinion, questioning the unity of the legal system in the field of freedom of access to information and the field of data secrecy which, each in its unique manner was regulated by the Law on Free Access to Information of Public Importance, and the Law on Data Secrecy, and that proposing special solutions in the field of data secrecy falls within the explicit competence of another ministry, directly contrary to the provisions of the Law on Ministries, the Commissioner, having thought that the proposal of the solutions in question by the Ministry of Defence goes beyond the competence of the Commissioner, forwarded the opinion to the competent ministries and the Government of the Republic of Serbia for further action.

3.6. Commissioner's Activities aimed at Affirmation of Rights

During 2017, the Commissioner held a number of trainings in the field of freedom of information and personal data protection.

Trainings for the implementation of the Law on Access to Information of Public Importance, as legal obligation of public authorities, the Commissioner realised independently or with the participation as a lecturer in trainings organised by other bodies or organisations for the needs of employees in the public administration bodies. The lectures were held for the representatives of various institutions and target groups, including the

⁶⁷ See the Report on the implementation of the Law on Free Access to Information of Public Importance, and the Law on Personal Data Protection, for 2016, Belgrade, March 2017, page 75. Report is available at the webpage of the body.

students of the Faculty of Organisational Sciences, students and PhD candidates of the Faculty of Political Sciences, representatives of the Alumni Network, OSCE Mission to Serbia, attendees of Human Rights School (organised by the Belgrade Centre for Human Rights), pupils of Medical School from Zaječar, attendees of the educational programme “PolitiKAS” (organised by Belgrade Open School). Assistant General Secretaries, as lecturers, participated in the Developers’ mDay conference, organised by the Mainstream Company.

Employees in the Commissioner’s Office participated as lecturers in trainings in the Law on Free Access to Information of Public Importance and Law on Personal Data Protection, organised by the Human Resource Management Service of the Republic of Serbia. Two trainings in the field of access to information of public importance were held on 25 May and 3 October for the needs of civil servants performing activities at requests for free access to information of public importance. In cooperation with this service, the Commissioner held two trainings for civil servants on personal data protection on 6 March and 27 September 2017

Within the project “Building of the Commissioner’s Capacities for Information of Public Importance and Personal Data Protection for the efficient and adequate performance of his legal powers to ensure the exercise of the right to free access to information and the right to data protection in line with the European standards”, funded from the grants of the Bilateral Programme of the Kingdom of Norway, based on the Agreement with Serbian Government, there were six trainings in the field of the free access to information of public importance, and the field of personal data protection. Two trainings were held in the field of free access to information of public importance intended for the representatives of courts and prosecutor’s offices aimed at a proper implementation of the Law. Four trainings were held in the field of personal data protection for the representatives of healthcare institutions, for the representatives of social welfare institutions, for the employees in the institutions in the field of education, and one training was intended for the economic entities.

In the event organised to celebrate Personal Data Protection Day on 28 January, the Commissioner pointed out the situation in this field and presented the main challenges in the work of this institution. In order to inform the wider and professional public about the exercise of this right, the publication number 2 was presented: [Personal Data Protection: Commissioner’s Views and Opinions.](#)

The Commissioner presented to the public, and made available to the Government, the Model Law on Personal Data Protection, in the conference in the Media Centre on 15 June 2017. On that occasion, the importance of compliance of the new law with the relevant European documents was stressed, especially with the General Regulation on Personal Data Protection. Provisions of the Action Plan for Chapter 23 define that the new law must be passed based on the Model created by the Commissioner.

As regards affirmation of freedom of information of public importance, on 28 September the Commissioner organised a conference dedicated to the International Right to Know Day. This conference has been organised every year since 2006 in cooperation with and with support of the OSCE Mission to Serbia, the Independent Journalists Association of Serbia, the Association of Serbian Journalists and the Freedom of Information Coalition. This year also, different bodies were awarded with acknowledgments for the achieved results and the contribution in the exercise of rights of the public to know, and a special award for the

best Information Booklet on the Work of bodies. On that occasion the publication number 6: [Free Access to Information: Commissioner's Views and Opinions](#) was presented.

In 2017, the Commissioner developed the practice of student internship and acquisition of practical knowledge in the field of free access to information of public importance and personal data protection. Within the cooperation between the Faculty of Law University of Belgrade and the Commissioner, for two groups of students of the third and fourth year of Legal Clinic for Ecological Law, practice was organised in the Commissioner's Office in the duration of 15 days. At the same time, the current practice was joined by two trainees of the educational programme "PolitiKAS", recommended within the Programme of practice on the educational programme "Study of the Future", by Belgrade Open School. Also, the professional practice in the Commissioner's Office was attended also by one student of post-graduate studies "Human Rights and Multi-level governance" University of Padua (Italy).

A special attention of the Commissioner was placed on the professional development of his employees with the aim to strengthen the capacities of this institution. One employee in the Commissioner's Office attended the Diplomatic Academy in the school year 2016/17 and graduated in 2017. The representatives of the Commissioner went to a study visit to the Council of Europe and the European Court for Human Rights in Strasbourg from 11-15 September (expenses of the study visit were covered by the organiser - Regional School of Public Administration ReSPA). Also, one representative of the Commissioner's Office went to a study visit from 26 August to 23 November in Germany (Berlin and Potsdam), Italy (Rome), and Slovenia (Ljubljana and Portorož) for professional development and attendance of the programme for Young State Officials of the Western Balkan countries for the support to the reform in the EU integrations through the capacity building of individuals, strengthening of their professional leadership and management capacities and the connection with the colleagues from the region and the EU, organised by the European Fund for the Balkans (expenses covered by the organiser European Fund for the Balkans). Within this programme she spent 11 weeks on professional development in the Italian institution for personal data protection (Garante per la protezione dei dati personali).

4. COMMISSIONER'S COOPERATION

4.1. Cooperation with Civil Society Organisations

Commissioner's cooperation with civil society organisations in 2017, as it is the established practice, was primarily based on the participation in numerous meetings for training and affirmation of both the right of the public to know, and the right to personal data protection. The Commissioner took part in many conferences, debates and other similar events organised in 2017 by civil society organisations, either alone or in cooperation with government institutions and/or international organisations, including: Transparency Serbia, Belgrade Centre for Human Rights, European Movement in Serbia, Partners for Democratic Changes Serbia, Share Foundation, Aarhus Centre, Victimology Society, Belgrade Open School, Centre for Euro-Atlantic Studies, Belgrade Centre for Security Policy, Balkan Investigative Reporting Network, Belgrade Centre for European Integration, Becej Youth Society, Media Centre-Nis, Lawyers' Committee for Human Rights, Civic Initiatives,

Education Centre, Centre for Liberal-Democratic studies, Centre for Free Elections and Democracy, Autonomous Women Centre, IT Society of Serbia, Human Rights House, Foundation for Development of Parliamentarism, Open Society Foundation, Serbia on the Move, Southern News Association, Serbian Association of Corporate Security Managers, SeConS Development Initiative Group, Humanitarian Law Centre, Astra,

4.2. Cooperation with the Media and Media Reporting on Commissioner's Activities

In the course of 2017, as in the previous years, the Commissioner had good cooperation with the media and journalists' associations. This year the Commissioner published 93 public comments reported by the media. The Commissioner was interviewed by journalists of "Danas" daily, NIN weekly, and other various media outlets such as Vreme, CINS, Blic, Insajder, Beta, Politika, Novi Magazin, Nedeljnik, Južne vesti, Istinomer, Kurir, Ekspres, VOICE and other media. The journalists most often asked the Commissioner to provide the data on current cases and taken measures.

In addition to regular activities, a special attention attracted, *inter alia*, the Commissioner's comments on the right of the public to know relevant information on "Savamala case", on provision of required information, i.e. documents from the case of inspection over the property and income of the Belgrade Mayor, on the imitation of the surveillance procedure regarding the placement of several dozens of cameras on Belgrade streets, and on the absence of a proper legal grounds and the question of security particularly sensitive data of patients in the Integrated Health Information System. The public was informed about the issues of the control of sick leaves of Steelworks Smederevo workers, as well as on the publication of the information regarding the pollution which occurred as a consequence of the fire on the Vinča landfill. The Commissioner and representatives of his Office appeared every day in printed and electronic media. The attention of the media was also attracted by the cases of the police administration asking for the submission of data from the medial records of psychiatric patients, and the dispute with the Anti-Corruption Agency which failed to provide the Commissioner with the required information, making a reference to data secrecy. Part of the media space was also taken by the presentation of the Commissioner's Model Law on Personal Data Protection, where it was said why the adoption of this law was important and which were the novelties compared to the existing solution.

Online media outlet "Balkan Insight", gathering investigative reporters in the Balkan Investigative Reporting Network (BIRN) in all Western Balkan countries – Albania, Bosnia and Herzegovina, Bulgaria, Macedonia, Romania, Serbia, Croatia, Montenegro, included the Commissioner into the this year's list of "Balkan Heroes – People who saved 2017", people who were "courageous and acted selflessly at the time when no one else did".

On the other hand, there was also a negative campaign against the Commissioner's Office and the Commissioner himself. SO there was a story in the public about alleged candidacy of Rodoljub Šabić for the Mayor at the time when local elections had not been published. So, a certain number of reports made by the Commissioner were followed by avoiding the main topic, emphasizing the story of the Commissioner's political aspirations. In the light of that campaign the Speaker of the National Assembly Ms Maja Gojković stated false data on the amount of the Commissioner's salary, even though that information is publically available and can be easily proved (information about it is published in the

Information Booklet on the Work of the Commissioner, which is regularly updated), which the Commissioner underlined, without receiving an apology from the Assembly.

What certainly helps the Commissioner in the open and transparent work, and helps the media to have a fast and easy reach of the information on the Commissioner is the Open Data Portal and Twitter Account of the Commissioner.

In 2016, the Commissioner presented [Open Data Portal](#) as one of the first bodies making the data on its work available to the citizens and the public through the Internet. This is still one of the most significant ways which the Commissioner uses to make his work available to the public.

The Commissioner continued marking his presence on the social networks by developing his official Twitter Account [@PoverenikRS](#), at which, *inter alia*, published the information regarding the current things of his work. Also, on this Commissioner's account there are the current affairs from the entire world regarding free access to information of public interest, the right of the public to know, open data, open government, personal data protection, information safety, privacy, etc.

Apart from the basic information of the office, the official Twitter Account of the Commissioner aims to promote positive social values, in particular, the protection of human rights.

Recognised in the aforementioned way, for two years of the existence of the account, it has been followed by more than 3,500 members of this social network.

4.3. International and Regional Cooperation

The Commissioner's international cooperation in 2016 was successful, just like in previous years. In addition to the already established cooperation with offices of international and supranational organisations in Serbia (OSCE, United Nations Development Program – UNDP, the Delegation of the European Union to the Republic of Serbia, the Council of Europe), the Commissioner also established cooperation with other organisations and public authorities.

Thus, the Commissioner cooperated with competent institutions in the region and in the countries of former Yugoslavia. This cooperation was established both in the field of personal data protection and in the field of freedom of information. Apart from regional cooperation, the Commissioner also cooperated with the information commissioners and other freedom of information and data protection authorities in Europe and internationally

Through participation in important international conferences in 2017, the Commissioner established cooperation with authorities of other states responsible for both or one of his spheres of competence.

The Commissioner's representatives also participated in the following international and regional events and meetings dedicated to freedom of information and personal data protection:

- Spring Conference of European Data Protection Authorities 2017 “New Horizons”, organised on 27 and 28 April 2017 in Limassol, Republic of Cyprus, organised by the Cyprian Commissioner for Personal Data Protection;
- the first meeting “Initiative 2017” gathering the representatives of the institutions in charge of personal data protection from Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Slovenia and Serbia, on 14 and 15 May 2017, in Bled, Slovenia;
- the 19th meeting of the bodies in charge of personal data protection from the Central and East Europa (CEEDPA), held in Tbilisi, Georgia, on 17 and 18 May 2017;
- the 111th Plenary Meeting of the Group 29 (Article 29 Data Protection Working Party) in Brussels, on 7 and 8 June 2017;
- the International Conference of the Free Information Commissioners in Manchester, on 19-21 September 2017;
- the work of the 35th Plenary Session of the Advisory Committee of the Convention 108, held in Strasbourg on 22-24 November 2017;
- invitation of the Council of Europe and Commissioner for Personal Data Protection of the Republic of Moldova, in seminars on personal data protection and free access to information in Chisinau, on 7-10 November 2017;
- the 8th international conference on personal data protection organised by the Russian Advisory Body in charge of personal data protection (Raskomnadzor) in Moscow, on 7 – 10 November 2017;

The Commissioner and the Agency for Personal Data Protection and Free Access to Information of Montenegro signed in Podgorica the Memorandum of Cooperation which represents the desire to continue the good cooperation of the two institutions in charge of personal data protection and free access to information.

Within the Project, there were two study visits to the Office for Personal Data Protection of the Czech Republic in the period 29 May – 1 June 2017m and the Commissioner for Information and Data Protection of the Republic of Malta in the period 19-22 August 2017.

At the invitation of the Data Protection Agency of Bosnia and Herzegovina, in cooperation with the TAIEX support programme of the European Commissioner, the Commissioner and Secretary General participated in the work of the expert group with the aim to align the Law on Personal Data Protection of Bosnia and Herzegovina with the General Regulation on Data Protection.

The expenses of the Commissioner’s participation in the mentioned conferences, meetings and other events were covered by their organisers (1), covered fully by the Commissioner (9) and partially by the Commissioner (3).

During the reporting period, the Commissioner also met on several occasions and had several talks with other representatives of European and international institutions and of neighbouring countries, in particular about the improvement of human rights and the fight against corruption and personal data protection.

The Commissioner had meetings with representatives of the diplomatic core, including Mr Andrea Orizio, Head of SCE Mission in Belgrade, and they talked about the future cooperation of this international organisation and the Commissioner's Office. The Commissioner also received the Head of EU Delegation to Serbia, Ambassador Sem Fabrizi, with whom the Commissioner considered the issues in the realisation of the Action Plan for Chapter 23, the work and the results of the Commissioner's Office, and the relations of the executive and legislative power towards the Commissioner's Office. The Commissioner also met with the Ambassador of the Federal Republic of Germany to Serbia, Mr Axel Dittmann. The main topic of this meeting was the process of EU integration of Serbia, as well as the issued in the adoption of the new Law on Personal Data Protection.

5. COMMISSIONER'S OFFICE AND ASSETS ЛУЖБА

5.1. Number of Employees in Commissioner's Office

The Commissioner's Office should have 94 employees to be able to exercise its powers under the Law on Access to Information and the Law on Personal Data Protection. This number had been set by the previous job classification rules of 2014 and remained unchanged in the currently applicable internal organisation and job classification rules of 2017, which were adopted by the competent committee of the National Assembly.⁶⁸

The staff plan of the Commissioner's Office for 2017 envisaged to fill in the vacancies of systematised jobs with 94 employees, without the persons appointed by the National Assembly (Commissioner and two deputies), for which the approval was given by the Ministry of Finance for the aspect of ensuring funds in the budget.

In early 2017, the Commissioner's Office had 71 full-time employees for an indefinite period of time. In the course of 2017, based on the taking over the state officials from other state authorities, 5 people were employed for an indefinite period of time, based on public calls for filling the vacancies for executive jobs and for filling the positions, in the period October – December 2017, 6 people were employed for an indefinite period of time. As during the year 4 persons terminated the employment, including 31 December 2017, **the Commissioner's Office had 78 employees for an indefinite period of time, which is 83% of the total number of employees defined by the job systematisation act.** During the year, eight employees were on long leaves, so for the purpose of the replacement of the temporary absent employees, and due to the increase of the workload in some periods of the year, several persons were hired for a definite period of time, which is why the Commissioner's Office had 7 persons employed for a definite period of time on 31 December 2017.

During the year, 4 persons were hired under contract to audit public procurements conducted in 2016 and for other activities beyond the job descriptions of systematised jobs in the Commissioner's Offices.

However, when it comes to the Staff Plan for 2018, the Commissioner, while writing this report, was informed by the Ministry of Finance⁶⁹ that the ministry does

⁶⁸ Rulebook on Internal Organisation and Job Classification No. 110-00-4/2017-04 of 21 February 2017, was approved by the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly by its enactment 21 No 112-402/14 of 10 May 2017.

⁶⁹ Letter no. 110-00-00572/2017-03 of 12 March 2018.

not agree with this staff plan because the funds have not been allocated according to the Law on the Budget of the Republic of Serbia for 2018, for the employment of new employees, and it is important to mention that the planned total number of employees for 2018 is identical to the number for 2017, for which the same Ministry had provided the approval for the Staff Plan of the Commissioner. When it comes to the assets of the Commissioner in 2018, the statement of the Ministry of Finances is correct that the funds defined by the law are insufficient for the salaries even for the existing number of employees in the Commissioner's Office. The Ministry of Finance, i.e. the Government, did not accept the arguments provided by the Commissioner on the necessity to ensure the necessary funds, and those arguments arise from the documents by which the Republic of Serbia, i.e. Serbian Government formally became obliged to strengthen the capacities of the Commissioner.⁷⁰

5.2. Development of Commissioner's Office

Throughout 2017, the Commissioner organised numerous activities aimed at improving the work of his Office and knowledge and skills of employees. Most of those activities were implemented as part of a two-year project from 2015, implemented under the bilateral agreement between the Serbian Government and the Ministry of Foreign Affairs of the Kingdom of Norway. The project will be addressed in more detail later in this chapter.

Thus, in 2017 activities have been continued to strengthen the security system for the information used by the Commissioner in his work and the introduction of the information security management system in accordance with the requirements of the SRPS ISO/IEC 27001:2013 standard, due to a great importance of the mentioned activities, not only for the security of information available to the Commissioner, but for the usefulness for supervision of implementation of LPDP by data controllers who have been certified for this standard. In 2017, the set objective was realised, to introduce the information security management system according to the requirements of the mentioned standard, in order to raise the security of the information property of the Commissioner and its protection from all internal, external, deliberate or accidental threats, and the implementation of the standard which, apart from the information security, includes the establishment of a more efficient administration, reduction of administrative costs and faster and cheaper implementation of the activities arising from the powers of the Commissioner defined by the law, and at the same time is a precondition for the development of an interoperable system which ensures the exchange of data, information and knowledge through harmonised operating processes, both within the organisation itself, and in the operating communication with external domestic and foreign economic operators, and with public administration authorities within the National Interoperability Framework⁷¹. In September 2017, the Commissioner received the Certificate of implementation of the information security management system according, meeting the requirements of the ISO 27001:2013 standard.

⁷⁰ Article 81 of the Law confirming the Stabilisation and Association Agreement between the European Communities and their Member States, on the one side, and the Republic of Serbia, on the other side ("Official Gazette of RS" – International Treaties number 83/2008); Action Plan for the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the period 2013-2018 ("Official Gazette of RS" number 79/13); Action Plan for Chapter 23, etc.

⁷¹ The National Interoperability Framework was adopted at the Serbian Government's session held on 10 January 2014 by the Decision 05 No.: 345 – 11418/2013.

As part of these activities, trainings of employees have been continued, so apart from the previously certified 6 auditors (the highest level of certification for SRPS ISO/IEC 27001) also 7 managers for data security, and another 5 employees acquired certificates in 2017, of which 2 for auditors and 3 for data security managers.

In 2017, three employees at the Commissioner's Office underwent security clearance checks and were issued with the requisite certificates by the Office of the National Security Council which allow them to access classified data as "top secrets" in accordance with the Law on Data Classification, so together with 21 employees who have been previously issued the certificates, the Commissioner's Office has 24 employees in total holding the certificates for the access to secret data, for a smooth execution of the activities arising from its power.

As part of the abovementioned project, 10 thematic trainings were held in 2017 (lasting one day, several days or continually) to improve the knowledge of employees in the Commissioner's Office. The trainings covered issues of relevance for the exercise of human rights which the Commissioner protects, the European integration process and issues relevant for work organisation, management and other issues concerning human resources development. Serbian experts and experts from EU Member States were hired under service contracts for this purpose.

5.3. Funds Allocated and Expenses for Work of Commissioner's Office

5.3.1. Allocations from Budget of the Republic of Serbia

The work of the Commissioner and his Office is funded from the budget of the Republic of Serbia.

The Law on Budget of the Republic of Serbia for 2017 **granted to the Commissioner funds for finance source 01 – budget revenue in the amount of RSD 177,738,000.00 which is by 17% less than compared to the Commissioner's Draft Financing Plan. In 2017, RSD 162,6951,555.59 or 92 % of the approved budget funds was spent on the Commissioner's work.**

Approved funds for 2017 to the Commissioner were not realised partly due to the fact that the staff plan for employment of the necessary number of operators had not been fully realised because of the inability to introduce into work a large number of persons within the short time period, and due to concurrent performance of very comprehensive activities within the Commissioner's power, and the elimination of backlogs in resolving the cases from this work period with the small number of employees, all with a constant influx of new cases.

The Commissioner's approved budget allocations and expenses are presented in the tables below:

Table 6: Execution of the Commissioner's budget for 2017

Function	Source of finance	Programme	Project	Econ. Class.	Description	Funds approved under the Law on the Budget of RS ("Official Gazette of RS, no 99/2016)	Executed	% of execution
160	01	1001	0011	411	Salaries and fringe benefits	118,900,000.00	110,367,009.69	92.82
				412	Social contributions payable by employer	20,920,000.00	19,754,673.96	94.43
				413	Compensation in kind	350,000.00	346,800.00	99.09
				414	Social benefits to employees	1,100,000.00	765,343.10	69.58
				415	Compensation for employees	2,900,000.00	2,460,480.91	84.84
				416	Rewards and bonuses	250,000.00	190,778.25	76.31
				421	Recurrent expenses	4,100,000.00	3,243,753.42	79.12
				422	Travel expenses	2,900,000.00	2,733,498.10	94.26
				423	Contracted services	11,325,000.00	10,048,457.97	88.73
				425	Repairs and maintenance	2,000,000.00	1,939,300.65	96.97
				426	Material	4,163,000.00	2,774,290.35	66.64
				482	Taxes, statutory charges and penalties	400,000.00	278,566.00	69.64
				512	Machines and equipment	3,800,000.00	3,796,279.59	99.90
				515	Intangible assets	4,630,000.00	4,252,323.60	91.84
TOTAL 01 Budget revenues						177,738,000.00	162,951,555.59	91.68
160	05	1001	0011	422	Travel expenses	0.00	0.00	0.00
				423	Contracted services	1,000.00	0.00	0.00
				426	Material	0.00	0.00	0.00
TOTAL 05 Donations from foreign countries						1,000.00	0.00	0.00
160	15	1001	0011	422	Travel expenses	1,352,000.00	387,897.03	28.69
				423	Contracted services	21,675,000.00	12,231,029.91	56.43
				425	Repairs and maintenance	382,000.00	377,872.63	98.92
				426	Material	140,000.00	0.00	0.00
				512	Machines and equipment	1,712,000.00	1,198,244.62	69.99
TOTAL15 Unspent donation funds from previous years						25,261,000.00	14,195,044.19	56.19
TOTAL FOR FUNCTION 160:						203,000,000.00	177,146,599.78	87.26

The largest part of the Commissioner's expenses in 2017 from the source of finance 01 – Budget revenues, not including personal income of employees, i.e. salaries, contributions and fringe benefits, refers to the communication services, computer services, administration services, information services, professional services, then for the current repairs and maintenance of the equipment, petrol costs, administrative equipment and licenses necessary to increase the security of the computer network of the Commissioner's Office as a precondition for the introduction of ISO/IEC 27001 standard.

Table 7: Overview of major expenses

Description	Funds spent – source of finance 01
Recurrent expenses	
Communication services (Internet costs, mobile and landline phone services)	2,944,519.01
Travel expenses	
Expenses of business trips abroad (obligation of the Commissioner to co-finance the activities on project “Building of Commissioner’s Capacities” POV PIOB-01-2015)	2,724,287.10
Contracted services	
Administrative services (translation and interpretation services and other administrative services)	1,481,973.71
Computer services (computer and software maintenance services)	5,237,460.00
Information services	1,010,394.14
Professional services	1,089,832.71
Current repairs and maintenance	
Current repairs and maintenance of the equipment (equipment for transport and administrative equipment)	1,372,938.75
Material	
Material for transport (petrol and other material for vehicles)	1,942,161.42
Machines and equipment	
Administrative equipment (computer equipment, in-built equipment, furniture)	3,796,279.59
Intangible assets	
Licenses	4,252,323.60

To ensure optimum conditions for the employees to work on implementation of both laws within the Commissioner’s sphere of competence, in 2017 the Commissioner’s Office also from the source of finance 01 – budget revenues, purchased administrative equipment, mainly computer equipment, in the amount of RSD 3.285.216,00 and intangible assets in the total amount of RSD 4.252.323,60 which refers to the purchase of licenses for the improvement of the security of the Commissioner’s computer network.

Table 8: Overview of purchased equipment and intangible assets

Number	Fixed assets	Source of finance	Quantity	Price per item, inclusive of VAT	Total
1	Fire resistant safe	01	1	61,397.66	61,397.66
2	Shelves	01	5	7,272.00	36,360.00
3	Shelves	01	5	6,360.00	31,800.00
4	Air conditioner Midea Mission 18000 BTU	01	1	93,360.00	93,360.00
5	Air conditions Bergen Tilia 12k	01	1	28,410.53	28,410.53
6	Server supermicro 6028r	01	1	708,000.00	708,000.00
7	Storage Qnap NAS	01	1	112,800.00	112,800.00
8	HDD WD SATA	01	6	16,320.00	97,920.00
9	SSD WD 2,5"	01	2	44,400.00	88,800.00
10	SSD KINGSTON 240GB	01	4	12,960.00	51,840.00
11	Keyboard HAMA	01	10	504.00	5,040.00

12	Mouse	01	10	456.00	4,560.00
13	Loudspeakers Genius	01	2	1,068.00	2,136.00
14	VGA – Graphic card	01	1	4,800.00	4,800.00
15	USB 32GB DT	01	6	1,020.00	6,120.00
16	Computer Fujitsu Esprimo D556/E85	01	18	111,000.00	1,998,000.00
17	Desktop Philips 21,5"	01	18	11,400.00	205,200.00
18	Printer HP LJ M102a	01	6	11,400.00	68,400.00
19	TAG device - 16450143736	01	1	2,022.00	2,022.00
Total					3,606,966.19

Number	Intangible assets - licenses	Source of finance	Quantity	Price per item, inclusive of VAT	Total
1	VMWare vsphere 6 essential plus kit for 3 hosts	01	1	532,980.00	532,980.00
2	Basic Support Vware	01	1	111,874.80	111,874.80
3	Veam Backup Essential enterprise 2 socket bundle	01	3	238,896.00	716,688.00
4	Veam Backup Essential enterprise - basic maintenance	01	3	49,896.00	149,688.00
5	Mdaemon 150 users	01	1	124,978.80	124,978.80
6	Mdaemon AV 150 users	01	1	63,860.40	63,860.40
7	Outlook connector 150 users	01	1	108,184.80	108,184.80
8	Archab Mdaemon arhiver 150 users	01	1	226,800.00	226,800.00
9	Windows server 2012	01	24	15,422.40	370,137.60
10	Cal per device	01	1	488,448.00	488,448.00
11	Sql server	01	2	496,087.20	992,174.40
12	ESET protection for 250 users	01	1	366,508.80	366,508.80
Total					4,252,323.60

Part of the administrative equipment including the in-built, computing and electronic equipment was purchased from the donation funds (source of finance 15 – unspent donations from previous years) in the total amount of RSD 1.198.244,62 according to the planned activities of the Commissioner under the project (“Building the Commissioner’s Capacities” POV-01-2015 under the Bilateral Programme of the Kingdom of Norway, according to Agreement on Implementation of Projects No 337-00-00018/2015-04/1 of 18 September 2015. The activities included the placement of the installation network and purchase of the relevant equipment for creating the conditions for the installation of the video surveillance system and access control system in the official premises of the Commissioner’s Office, all with the aim to introduce the information security system in line with the standard SRPS ISO/IEC 27001:2013 (27000:2013) which includes a comprehensive set of measures to reduce the risk of loss and “leak” of information.

Number	Fixed assets	Source of finance	Quantity	Price per item inclusive of VAT	Total
1	Contactless card reader	15	9	2,799.97	25,199.73
2	EL - MAG acceptor	15	18	2,239.98	40,319.70
3	EL - MAG acceptor of 120 kg	15	1	11,959.88	11,959.88
4	Magnet contact	15	26	1,292.29	33,599.54
5	GSM controller	15	4	2,483.98	9,935.92
6	Hydraulic sealer	15	3	2,533.31	7,599.93
7	EL - MAG acceptor – under voltage	15	3	2,667.97	8,003.91
8	Panic taster	15	3	1,563.98	4,691.94
9	Alarm SMS device	15	1	26,799.73	26,799.73
10	Network controller	15	4	100,520.03	402,080.12
11	ACCU Battery	15	4	7,180.01	28,720.04
12	Video camera	15	10	46,970.75	469,707.50
13	NVR recorder	15	1	40,019.60	40,019.60
14	24-port POE SWITCH	15	1	35,879.64	35,879.64
15	8-port POE SWITCH	15	8	6,715.93	53,727.44
Total					1,198,244.62

5.3.2. Project Funds

The Commissioner and the Serbian European Integration Office entered into Agreement on Implementation of the Project No. 337-00-00018/2015-04/1 of 18 September 2015 (hereinafter referred to as “the Agreement”) titled “Building of the Commissioner’s Capacities for Efficient and Effective Exercise of Legal Powers and Ensuring of Exercise of Freedom of Information and Right to Personal Data Protection, in accordance with the European Standards”, reference number POV-01-2015,⁷² which is financed from grants under the Bilateral Programme of the Kingdom of Norway for 2015 on the basis of the Bilateral Programme Agreement with the Government of the Republic of Serbia, which was entered into on 18 November 2013 in Belgrade, and Annex 2 of **the Agreement between the Government of the Republic of Serbia and the Ministry of Foreign Affairs of the Kingdom of Norway relating to the Bilateral Agreement, which was entered into in Belgrade on 3 August 2015.**

The objective of the project is to build and strengthen the capacities of the Commissioner in the exercise of his powers to contribute to overall improvement of exercise of the freedom of information and the right to personal data protection, as well as to Serbia’s EU integration process in the relevant fields of integration (e.g. political criteria and negotiation chapters: Information Society and Media (Chapter 10), Judiciary and Fundamental Rights (Chapter 23) and Justice, Freedom and Security (Chapter 24)).

The project is focused on selected indirect users – representatives of state administration, as a body of public authority in terms of right to free access to information,

⁷² The abbreviation POV is used to designate the Commissioner in Serbian.

and the representatives of data controllers in terms of the right to personal data protection. A smaller portion of the project is focused to strengthening of the Commissioner's visibility in the wider public as an institution competent for the exercise of their rights and interests. Both the right to free access to information and the right to personal data protection are guaranteed by Serbian Constitution, and ratified international and European documents, and at the same time can contribute to the realisation of interests in other fields, such are good and fair governance or consumers' protection.

The total budget of the Project pursuant to the Agreement is RSD 53,086,375.00, of which a portion of **RSD 46,123,875.00 is financed from grants under the Bilateral Agreement by the Kingdom of Norway**, while a portion of RSD 6,962,500.00 is financed from the Commissioner's budget.

The Project was launched on 18 September 2015, when the Agreement was signed between the Commissioner and the Serbian European Integration Office. According to the Agreement on the project implementation, the project will last 26 months and the Commissioner, from the part of the funds financed from the grants under the Bilateral Programme for the first year of implementation, receives the funds in the amount of RSD 17.764.334,94, for the second year RSD 24.239.001,60 and for the third year RSD 4.120.538,46.

On 12 October 2015, the Serbian European Integration Office transferred the amount of RSD 15,996,605.83 to the Commissioner for the first year of the project implementation, instead of RSD 17.764.334,94 due to the changes in the foreign currency exchange rate, which is by RSD 1.767.729,11 less than the funds planned by the Agreement on the project implementation for the first year of implementation, while for the second year of implementation, on 21 December 2016, the Commissioner was transferred the amount of RSD 14.660.233,54 and on 24 April 2017, the amount of RSD 9.008.561,70 which together make RSD 39.665.401,07.

In 2017, the Commissioner continued with the activation on the project realisation. **Information on the project "Building of the Commissioner's Capacities" POV-01-2015 and the activities undertaken to implement it is available on the Commissioner's official website.** Most of the grant funds in 2017 were spent for the payment of fees for expert services to persons hired to carry out project activities (project team, local and international experts for certain tasks and expertise, both in the field of data protection, e.g. training in handling of particularly sensitive data, biometric data, transborder transfer of personal data, automated data processing, digital forensics, etc. and in the field of human resource management and in the field of "EU Legal Framework and Practice") in the total amount of RSD 9.362.879,39. A portion of the funds in the amount of RSD 1.337.608,28 was spent on education and development of employees to ensure they will become proper data security officers and information security auditors who will control and evaluate the data security standards applied by other entities, as well as for professional development of employees through an English language course, given that the Commissioner will take on a more prominent role in the European integration process in the future. A portion of the funds is used to the introduction of the SRPS ISO/IEC 27001:2013 standard for the information safety which includes the adoption and implementation of numerous procedures, undertaking specific and technical protection measures and education and familiarising of the employees with the changes in the operations aimed at data protection. After the checks by the authorised auditors on introduced and realised information safety system within the

organisation, the Commissioner received the certificate on the information security management system ISO 27001:2013. A high standard for establishing and managing the information safety was defined by the International Standardisation Organisation, and this certificate is a confirmation of the quality data protection operated by the Commissioner. Information safety is also very important for the Commissioner in terms of both functions he performs, personal data protection and data secrecy.

Of the total transferred funds during two years of implementation of the activities of the project “Building of Commissioner’s Capacities” POV-0-2015, the Commissioner used the amount of RSD 25.536.144,70, so after the second year of reporting, the remaining funds of the Commissioner amount to RSD 14.129.256,37. Taken the significance of the conducted activities on strengthening the Commissioner’s capacities and the amount of saved i.e. unspent financial funds on the project, the Commissioner addressed the Ministry of European Integration with the proposal to extend the Project and new activities to contribute further strengthening of the Commissioner’s capacities. The Ministry agreed on the Commissioner’s proposal regarding the change of the existing and adding new activities within the third year of project implementation, redistribution of the funds within the project budget and the extension of the project until 30 November 2018.⁷³

6. PROPOSALS AND RECOMMENDATIONS

6.1. About the Review of the Commissioner’s Report for 2016

The most recent resolutions of the National Assembly in connection with implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection were passed in 2014, when the Commissioner’s Annual Report for 2013 was reviewed.

The Commissioner’s Annual Report for the past three years (2014, 2015, and 2016) has not been reviewed by the National Assembly (in the plenary session) although this is a legal duty of the Assembly set under the Law on National Assembly and the Rules of Procedure of the National Assembly.

The Commissioner’s 2014 and 2015 reports were reviewed by the competent parliamentary Committees, with the exception of the Committee on Culture and Information, which, as the Committee in charge of overseeing implementation of the Law on Access to Information, failed for the first time to review the Commissioner’s Report on implementation of this Law for 2015. The Report for 2016 was reviewed by only one of the competent parliamentary committees which is the Committee on Human and Minority Rights and Gender Equality.

⁷³ Letter of the Ministry of European Integration number 337-00-154/2015-03 of 12 January 2018

6.2. Commissioner's Recommendations Based on Situation in 2017

Taking into account that the National Assembly has not reviewed the Commissioner's Report for 2016 and has not adopted resolutions in connection with the Report, it can be concluded that the National Assembly failed to exercise its oversight function in relation to the executive branch, i.e. the Government, and that the Commissioner's recommendations have not been implemented.

For these reasons, the Commissioner would like to repeat in this Report the recommendations that have not been complied with, and the new ones conditioned by the newly occurring challenges in the work.

Taking into account Article 58 of the Law on the National Assembly and Articles 237-241 of the Rules of Procedure of the National Assembly, **the Commissioner proposes the following to the National Assembly:**

1. The competent Committees of the National Assembly should review the Commissioner's Report for 2017 and, on the basis of the Recommendations contained herein, adopt draft resolutions with recommendations and measures aimed at improving the situation, which would then be forwarded to the National Assembly for the review,
2. The National Assembly should open a debate on the Report and the draft resolutions submitted by competent committees and pass a resolution on their implementation, thereby supporting the Commissioner's efforts and activities in the exercise and further improvement of freedom of information and the right to personal data protection and elimination of the obstacles highlighted in this Report,
3. The National Assembly should ensure continual supervision of compliance with its resolutions by making use of the available mechanisms to control the work of the Government, i.e. the executive branch, in connection with the recommendations made by the independent state bodies, including the Commissioner, with particular focus on accountability for omissions in the work of public authorities,
4. The competent committees and professional services of the National Assembly, when enacting laws, should give due consideration to Commissioner's views regarding the compliance, and possible effects of those laws on the exercise of the right to access to information of public importance and the right to personal data protection,
5. The National Assembly should timely and adequately provide support to the Commissioner in terms of the realisation of independent of bodies.

The Commissioner hereby makes the following recommendations to the Government of the Republic of Serbia:

1. To define the Bill on Personal Data Protection, according to the obligations arising from the Action Plan for Chapter 23, defining that the new Law on Personal Data Protection shall be passed based on the Model Law designed by the Commissioner and submitted to Serbian Government in August 2017, aligned with the EU *acquis* and Serbian Constitution, in the manner in which the passed law is aligned with the national legal system and applicable in practice;

2. To prepare the text of the Law Amending the Law on Free Access to Information of Public Importance, in consultations with the Commissioner, to eliminate the obstacles to its implementation, particularly regarding the execution of the Commissioner's decisions, to define the Bill and submit it to the National Assembly for the review and adoption;

3. To establish, in line with own obligations defined by the Law on Free Access to Information of Public Importance, an adequate mechanism of ensuring the execution of Commissioner's final, executive and binding decisions, and a more efficient oversight over the Law implementation;

4. To prepare without delay, in consultations with the Commissioner, and pass the new strategy of personal data protection with the relevant action plan for the implementation of the strategy;

5. That Serbian Government and competent ministries, when preparing the law and other regulations, should consider with due care the Commissioner's views regarding the harmonisation, and possible effects of those regulations on the exercise of the right to access to information of public importance and the right to personal data protection;

6. That Serbian Government and the competent ministry should ensure adequate financial funds for a smooth operation of the Commissioner as an independent body, particularly when it comes to the announced harmonisation of the regulations with the EU *acquis* in the field of personal data protection, and the announced extension of the powers of this body in the field of the access to information of public importance;

7. That the Commissioner, in line with the announced new powers, is provided with the conditions for the proper number of employees;

8. To undertake measures for the accountability of the officials who failed to comply with the obligations in lien with the law;

9. To ensure, in consultations with the Commissioner, that competent ministries, as well as other bodies of the executive branch, improve the knowledge in the field of the right to information of public importance and the right to personal data protection, including the use of the acquired knowledge for establishing better conditions to exercise these rights in the Republic of Serbia.

COMMISSIONER
Rodoljub Sabic sgd.

Done in Belgrade, on 30 March 2018
Number: 073-17-1736/2017-01